MISSOURI LAWS

relating to

CHILD ABUSE AND NEGLECT

(Revised 3-05)

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CHAPTER 1
LAWS IN FORCE AND
CONSTRUCTION OF STATUTES

1.092. Best interest of child, welfare policy of state.–The child welfare policy of this state is what is in the best interests of the child.

(L. 1995 H.B. 232 & 485 and S.B. 174)

CHAPTER 210, RSMO
CHILD PROTECTION AND REFORMATION

CHILD ABUSE

210.109. Child protection system established by children's division, system protocol, priority well-being and safety of child, duties, records, investigations or assessments and services—central registry maintained—documentation to be submitted on effectiveness of system, when, to whom—independent evaluation required.

1. The children's division shall establish a child protection system for the entire state.

2. The child protection system shall seek to promote the safety of children and the integrity and preservation of their families by conducting investigations or family assessments and providing services in response to reports of child abuse or neglect. The system shall endeavor to coordinate community resources and provide assistance or services to children and families identified to be at risk, and to prevent and remedy child abuse and neglect.

3. In addition to any duties specified in section 210.145, in implementing the child protection system, the division shall:

(1) Maintain a central registry;

(2) Receive reports and establish and maintain an information system operating at all times, capable of receiving and maintaining reports;

(3) Attempt to obtain the name and address of any person making a report in all cases, after obtaining relevant information

regarding the alleged abuse or neglect, although reports may be made anonymously; except that, reports made by mandated reporters under section 210.115, including employees of the children's division, juvenile officers, and school personnel shall not be made anonymously, provided that the reporter shall be informed, at the time of the report, that the reporter's name and any other personally identifiable information shall be held as confidential and shall not be made public as provided under this section and section 211.319, RSMo.

(4) Upon receipt of a report, check with the information system to determine whether previous reports have been made regarding actual or suspected abuse or neglect of the subject child, of any siblings, and the perpetrator, and relevant dispositional information regarding such previous reports;

(5) Provide protective or preventive services to the family and child and to others in the home to prevent abuse or neglect, to safeguard their health and welfare, and to help preserve and stabilize the family whenever possible. The juvenile court shall cooperate with the division in providing such services;

(6) Collaborate with the community to identify comprehensive local services and assure access to those services for children and families where there is risk of abuse or neglect;

(7) Maintain a record which contains the facts ascertained which support the determination as well as the facts that do not support the determination.

(8) Whenever available and appropriate, contract for the provision of children's services through children's services providers and agencies in the community; except that the state shall be the sole provider of child abuse and neglect hotline investigation, and the initial family assessment. The division shall attempt to seek input from child welfare service providers in completing the initial family assessment. In all legal proceedings involving children in the custody of the division, the division shall be represented in court by either division personnel or persons with whom the division contracts with for such legal representation. All children's services providers and agencies shall be subject to criminal background checks pursuant to chapter 43, RSMo, and shall submit names of all employees to the family care safety registry. As used in this subsection, "report" includes any telephone call made pursuant to section 210.145.

(L. 1994 S.B. 595, A.L. 1995 H.B. 232 & 485 and S.B. 174, A.L. 1997 H.B. 343 and S.B. 358, A.L. 1998 H.B. 1556 and S.B. 961, A.L. 2000 S.B. 757 & 602)

CROSS REFERENCE

Application of law to adoption petitions filed on or after August 28, 1997, RSMo. 453.012.

210.110. Definitions.–As used in sections 210.109 to 210.165, and sections 210.180 to 210.183, the following terms mean:

(1) **"Abuse"**, any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody, and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse;

(2) **"Central registry"**, a registry of persons where the division has found probable cause to believe prior to the effective date of this section or by preponderance of the evidence after the effective date of this section or a court has substantiated through court adjudication that the individual has committed child abuse or neglect or the person has pled guilty or has been found guilty of a crime pursuant to section 565.020, 565.021, 565.023, 565.024 or 565.050, RSMo, if the victim is a child less than eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or other crime pursuant to chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050, RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090 RSMo, section 573.025 or 573.035, RSMo, or an attempt to commit any such crimes. Any person placed on the registry prior to the effective date of this section, shall remain on the registry for the duration of time required by section 210.152.

(3) **"Child"**, any person, regardless of physical or mental condition, under eighteen years of age;

(4) **"Children's services providers and agencies"**, any public, quasi-public, or private entity with the appropriate and relevant training and expertise in delivering services to children and their families as determined by the children's division, and capable of providing direct services and other family services for children in the custody of the children's division or any such entities or agencies that are receiving state moneys for such services;

(5) **"Director"**, the director of the Missouri children's division within the department of social services;

(6) **"Division"**, the Missouri children's division within the department of social services;

(7) **"Family assessment and services"**, an approach to be developed by the children's division which will provide for a prompt assessment of a child who has been reported to the division as a victim of abuse or neglect by a person responsible for that child's care, custody or control and of that child's family, including risk of abuse and neglect and, if necessary, the provision of community-based services to reduce the risk and support the family;

(8) **"Family support team meeting"** or **"team meeting"**, a meeting convened by the division or children's services provider in behalf of the family and/or child for the purpose of determining service and treatment needs, determining the need for placement and developing a plan for reunification or other permanency options,

determining the appropriate placement of the child, evaluating case progress, and establishing and revising the case plan;

(9) **"Investigation"**, the collection of physical and verbal evidence to determine if a child has been abused or neglected;

(10) **"Jail or detention center personnel"**, employees and volunteers working in any premises or institution where incarceration, evaluation, care, treatment or rehabilitation is provided to persons who are being held under custody of the law;

(11) **"Neglect"**, failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical or any other care necessary for the child's well-being;

(12) **"Probable cause"**, available facts when viewed in the light of surrounding circumstances which would cause a reasonable person to believe a child was abused or neglected;

(13) **"Preponderance of the evidence"**, that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it or evidence which as a whole shows the fact to be proved to be more probable than not;

(14) **"Report"**, the communication of an allegation of child abuse or neglect to the division pursuant to section 210.115;

(15) **"Those responsible for the care, custody, and control of the child"**, those included but not limited to the parents or guardian of a child, other members of the child's household, or those exercising supervision over a child for any part of a twenty-four hour day. Those responsible for the care, custody and control shall also include any adult who, based on * relationship to the parents of the child, members of the child's household or the family, has access to the child.

(L. 1975 H.B. 578 § 1, A.L. 1982 H.B. 1171, et al. A.L. 1985 H.B. 366, et al., A.L. 1994 S.B. 595, A.L. 2000 S.B. 757 & 602, A.L. 2004 H.B. 1453)

*Word "their" appears here in original rolls.

210.115. Reports of abuse, neglect, and under age eighteen deaths–persons required to report–deaths required to be reported to the division or child fatality review panel, when–report made to another state, when.

1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident, intern, nurse, hospital or clinic personnel that are engaged in the examination, care, treatment or research of persons, and any other health practitioner, psychologist, mental health professional, social worker, day care center worker or other child-care worker, juvenile officer, probation or parole officer, jail or detention center personnel, teacher, principal or other school official, minister as provided by section 352.400, RSMo, peace officer or law enforcement official, or other person with responsibility for the care of children has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or

neglect, that person shall immediately report or cause a report to be made to the division in accordance with the provisions of sections 210.109 to 210.183. As used in this section, the term "abuse" is not limited to abuse inflicted by a person responsible for the child's care, custody and control as specified in section 210.110, but shall also include abuse inflicted by any other person.

2. Whenever such person is required to report pursuant to sections 210.109 to 210.183 in an official capacity as a staff member of a medical institution, school facility, or other agency, whether public or private, the person in charge or a designated agent shall be notified immediately. The person in charge or a designated agent shall then become responsible for immediately making or causing such report to be made to the division. Nothing in this section, however, is meant to preclude any person from reporting abuse or neglect.

3. Notwithstanding any other provision of sections 210.109 to 210.183, any child who does not receive specified medical treatment by reason of the legitimate practice of the religious belief of the child's parents, guardian, or others legally responsible for the child, for that reason alone, shall not be found to be an abused or neglected child, and such parents, guardian or other persons legally responsible for the child shall not be entered into the central registry. However, the division may accept reports concerning such a child and may subsequently investigate or conduct a family assessment as a result of that report. Such an exception shall not limit the administrative or judicial authority of the state to ensure that medical services are provided to the child when the child's health requires it.

4. In addition to those persons and officials required to report actual or suspected abuse or neglect, any other person may report in accordance with sections 210.109 to 210.183 if such person has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect.

5. Any person or official required to report pursuant to this section, including employees of the division, who has probable cause to suspect that a child who is or may be under the age of eighteen, who is eligible to receive a certificate of live birth, has died shall report that fact to the appropriate medical examiner or coroner. If upon review of the circumstances and medical information, the medical examiner or coroner determines that the child died of natural causes while under medical care for an established natural disease, the coroner, medical examiner or physician shall notify the division of the child’s death and that the child’s attending physician shall be signing the death certificate. In all other cases, the medical examiner or coroner shall accept the report for investigation, shall immediately notify the division of the child's death as required in section 58.452, RSMo, and shall report the findings to the child fatality review panel established pursuant to section 210.192.

6. Any person or individual required to report may also report the suspicion of abuse or neglect to any law enforcement agency or juvenile office. Such report shall not, however, take the place of reporting or causing a report to be made to the division.

7. If an individual required to report suspected instances of abuse or neglect pursuant to this section has reason to believe that the victim of such abuse or neglect is a resident of another state or was injured as a result of an act which occurred in another state, the person required to report such abuse or neglect may, in lieu of reporting to the Missouri children's division, make such a report to the child protection agency of the other state with the authority to receive such reports pursuant to the laws of such other state. If such agency accepts the report, no report is required to be made, but may be made, to the Missouri children's division.

(L. 1975 H.B. 578 § 2, A.L. 1980 S.B. 574, A.L. 1982 H.B. 1171, et al., A.L. 1991 H.B. 185, A.L. 1993 S.B. 253 and S.B. 394, A.L. 1994 S.B. 595, A.L. 1998 H.B. 1556, A.L. 2000 S.B. 757 & 602, A.L. 2002 S.B. 923, et al.)

CROSS REFERENCE

Child abuse, ministers duty to report, RSMo 352.400

(1986) It has been held that a violation of this section does not give rise to a private cause of action. Doe "A" v. Special School District of St. Louis County, 637 F. Supp. 1138 (E.D. Mo).

210.120. Medical institution staff members, duties of.– Whenever a person is required to report under sections 210.110 to 210.165 in his official capacity as a staff member of a medical institution, whether public or private, he shall immediately notify the physician in charge or his designee who shall then take or cause to be taken color photographs of physical trauma and shall, if medically indicated, cause to be performed radiologic examination of the child who is the subject of a report, costs of which shall be paid by the division. Reproductions of such color photographs and/or radiologic reports shall be sent to the division as soon as possible.

(L. 1975 H.B. 578 § 3, A.L. 2004 H.B. 1453)

210.125. 1. Protective custody of child, who may take, reports required—temporary protective custody defined.

1. A police officer, law enforcement official, or a physician who has reasonable cause to suspect that a child is suffering from illness or injury or is in danger of personal harm by reason of his surroundings and that a case of child abuse or neglect exists, may request that the juvenile officer take the child into protective custody under chapter 211, RSMo.

2. A police officer, law enforcement official, or a physician who has reasonable cause to believe that a child is in imminent danger of suffering serious physical harm or a threat to life as a result of

abuse or neglect and such person has reasonable cause to believe the harm or threat to life may occur before a juvenile court could issue a temporary protective custody order or before a juvenile officer could take the child into protective custody, the police officer, law enforcement official or physician may take or retain temporary protective custody of the child without the consent of the child's parents, guardian or others legally responsible for his care.

3. Any person taking a child in protective custody under this section shall immediately notify the juvenile officer of the court of the county in which the child is located of his actions and notify the division and make a reasonable attempt to advise the parents, guardians or others legally responsible for the child's care. The jurisdiction of the juvenile court attaches from the time the juvenile is taken into protective custody. Such person shall file, as soon as practicable but no later than twelve hours, a written statement with the juvenile officer which sets forth the identity of the child and the facts and circumstances which gave such person reasonable cause to believe that there was imminent danger of serious physical harm or threat to the life of the child. Upon notification that a child has been taken into protective custody, the juvenile officer shall either return the child to his parents, guardian, or others responsible for his care or shall initiate child protective proceedings under chapter 211, RSMo. In no event shall an employee of the division, acting upon his own, remove a child under the provisions of this act*.

4. Temporary protective custody for purposes of this section shall not exceed twenty-four hours. Temporary protective custody for a period beyond twenty-four hours may be authorized only by an order of the juvenile court.

5. For the purposes of this section, **"temporary protective custody"** shall mean temporary placement within a hospital or medical facility or emergency foster care facility or such other suitable custody placement as the court may direct; provided, however, that an abused or neglected child may not be detained in temporary custody in a secure detention facility.

(L. 1975 H.B. 578 § 4, A.L. 1982 H.B. 1171, et al.)

*Original rolls contain words "this act". This act (H.B. 1171, et al., 1982) contains numerous sections. See Disposition of Sections table for definitive listing.

MISSOURI SUPREME COURT RULE

111.11 Emergency Protective Custody.

a. A juvenile may be taken into emergency protective custody by law enforcement officer or a physician who has reasonable cause to believe that the juvenile is in imminent danger of suffering serious physical harm or a threat to life that may occur before a

court could issue a protective custody order before a juvenile officer could take the juvenile into temporary protective custody.

b. Any person taking a juvenile into emergency protective custody shall immediately notify the juvenile officer of the court of county in which the juvenile is located of such action, shall notify the children's division of such action and make a reasonable attempt to advise the parent, guardians or others legally responsible for the juvenile's care. As soon as practicable, but not later than twelve hours after taking the juvenile into emergency protective custody, such person shall file with the juvenile officer a written statement that sets forth the identify of the juvenile and the facts and circumstances that gave such person reasonable cause to believe that there was imminent danger of serious physical harm or threat to the life of the juvenile. The jurisdiction of the court attaches from the time the juvenile was taken into emergency protective custody.

c. For purpose of this Rule 111.11, "emergency protective custody" means temporary placement by a law enforcement officer or physician within a hospital, medical facility, emergency foster care facility or such other suitable custody as authorized by the court of juvenile to have been abused or neglected; provided, however, that such custody shall not be within a secure detention facility. Emergency protective custody shall not exceed twelve hours.

Comments: Law enforcement officers and physicians are authorized to take juveniles into "temporary protective custody" pursuant to section 210.125, RSMo. Written notice of such custody by law enforcement officer or physician must be provided to the juvenile officer within twelve hours. Section 210.125.3. "Temporary protective custody," as that term is defined in section 210.125.5 includes periods of temporary protective custody both before and after the juvenile officer is notified. For purposes of clarification as to the obligations of those affected by these rules, these rules divide "temporary protective custody" as that term is used in section 210.125 into "emergency protect custody" as defined in this Rule 111.11 and "temporary protective custody" as that term is defined in Rule 110.125(25). The period of emergency protective custody for purposes of this rule 111.11 is the period from the time the juvenile is taken into custody by a law enforcement officer or physician until placed into temporary protective custody by the juvenile officer or ordered into protective custody by the court. That period may not exceed twelve hours.

210.130. Oral reports, when and where made—contents of reports.

1. Oral reports of abuse or neglect shall be made to the division by telephone or otherwise.

2. Such reports shall include the following information: The names and addresses of the child and his parents or other persons responsible for his care, if known; the child's age, sex, and race; the nature and extent of the child's injuries, abuse, or neglect,

including any evidence of previous injuries, abuse, or neglect to the child or his siblings; the name, age and address of the person responsible for the injuries, abuse or neglect, if known; family composition; the source of the report; the name and address of the person making the report, his occupation, and where he can be reached; the actions taken by the reporting source, including the taking of color photographs or the making of radiologic examinations pursuant to sections 210.110 to 210.165, or both such taking of color photographs or making of radiologic examinations, removal or keeping of the child, notifying the coroner or medical examiner, and other information that the person making the report believes may be helpful in the furtherance of the purposes of sections 210.110 to 210.165.

3. Evidence of sexual abuse or sexual molestation of any child under eighteen years of age shall be turned over to the division within twenty-four hours by those mandated to report.

(L. 1975 H.B. 578 § 5, A.L. 1980 S.B. 574, A.L. 1982 H.B. 1171, et al.)

210.135. Immunity from liability granted to reporting person or institution, when—exception.–Any person, official, or institution complying with the provisions of sections 210.110 to 210.165 in the making of a report, the taking of color photographs, or the making of radiologic examinations pursuant to sections 210.110 to 210.165, or both such taking of color photographs and making of radiologic examinations, or the removal or retaining a child pursuant to sections 210.110 to 210.165, or in cooperating with the division, or any other law enforcement agency, juvenile office, court, or child-protective service agency of this or any other state, in any of the activities pursuant to sections 210.110 to 210.165, or any other allegation of child abuse, neglect or assault, pursuant to sections 568.045 to 568.060, RSMo, shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions. Provided, however, any person, official or institution intentionally filing a false report, acting in bad faith, or with ill intent, shall not have immunity from any liability, civil or criminal. Any such person, official, or institution shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

(L. 1975 H.B. 578 § 6, A.L. 1980 S.B. 574, A.L. 1982 H.B. 1171, et al., A.L. 1993 H.B. 170, A.L. 1998 H.B. 1556)

210.140. Privileged communication not recognized, exception.–Any legally recognized privileged communication, except that between attorney and client, shall not apply to situations involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required or permitted by sections 210.110 to 210.165, to cooperate with the division in any of its activities pursuant to sections 210.110 to

210.165, or to give or accept evidence in any judicial proceeding relating to child abuse or neglect.
(L. 1975 H.B. 578 § 7, A.L. 1980 S.B. 574)

(1984) "Situations" as used in this section restricting the invocation of certain privileged communications in child abuse proceedings includes both civil and criminal proceedings. State exrel. D.M. v. Hoester (Mo. banc), 681 S.W.2d 449.

210.145. Telephone hotline for reports on child children's division, duties, protocols, law enforcement contacted immediately, investigation within twenty-four hours, exception—chief investigator named—admissibility of reports in custody cases.

1. The division shall develop protocols which give priority to:

(1) Ensuring the well-being and safety of the child in instances where child abuse or neglect has been alleged;

(2) Promoting the preservation and reunification of children and families consistent with state and federal law;

(3) Providing due process for those accused of child abuse or neglect; and

(4) Maintaining an information system operating at all times, capable of receiving and maintaining reports. This information system shall have the ability to receive reports over a single, statewide toll-free number. Such information system shall maintain the results of all investigations, family assessments and services, and other relevant information.

2. The division shall utilize structured decision-making protocols for classification purposes of all child abuse and neglect reports. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child. all child abuse and neglect report shall be initiated within twenty-four hours and shall be classified based upon the reported risk and injury to the child. The division shall promulgate rules regarding the structured decision-making protocols to be utilized for all child abuse and neglect reports.

3. Upon receipt of a report, the division shall determine if the report merits investigation, including reports which if true would constitute a suspected violation of any of the following: section 565.020, 565.021, 565.023, 565.024, or 565.050, RSMo, if the victim is a child less than eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or other crimes under chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050, RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, section 573.025, 573.035, 573.037, or 573.040, RSMo, or an attempt to commit any such crimes. The division shall immediately communicate all reports that merit investigation to its appropriate local office and any relevant information as may be contained in the information system. The local

division staff shall determine, through the use of protocols developed by the division, whether an investigation or the family assessment and services approach should be used to respond to the allegation. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child.

4. The local office shall contact the appropriate law enforcement agency immediately upon receipt of a report which division personnel determine* merits an investigation, and provide such agency with a detailed description of the report received. In such cases the local division office shall request the assistance of the local law enforcement agency in all aspects of the investigation of the complaint. The appropriate law enforcement agency shall either assist the division in the investigation or provide the division, within twenty-four hours, an explanation in writing detailing the reasons why it is unable to assist.

5. The local office of the division shall cause an investigation or family assessment and services approach to be initiated in accordance with the protocols established in section 2 of this section, except in cases where the sole basis for the report is educational neglect. If the report indicates that educational neglect is the only complaint and there is no suspicion of other neglect or abuse, the investigation shall be initiated within seventy-two hours of receipt of the report. If the report indicates the child is in danger of serious physical harm or threat to life, an investigation shall include direct observation of the subject child within twenty-four hours of the receipt of the report. Local law enforcement shall take all necessary steps to facilitate such direct observation. If the parents of the child are not the alleged abusers, a parent of the child must be notified prior to the child being interviewed by the division. If the abuse is alleged to have occurred in a school or child-care facility, the division shall not meet with the child in any school building or child-care facility building where abuse of such child is alleged to have occurred. When the child is reported absent from the residence, the location and well-being of the child shall be verified. For purposes of this subsection, “child-care facility” shall have the same meaning as such term defined in section 210.201 .

6. The director of the division shall name at least one chief investigator for each local division office, who shall direct the division response on any case involving a second or subsequent incident regarding the same subject child or perpetrator. The duties of a chief investigator shall include verification of direct observation of the subject child by the division and shall ensure information regarding the status of an investigation is provided to the public school district liaison. The public school district liaison shall develop protocol in conjunction with the chief investigator to ensure information regarding an investigation is shared with appropriate school personnel. The superintendent of each school district shall designate a specific person or persons to act as the public school district liaison. Should the subject child attend a nonpublic school the chief investigator shall notify the school

principal of the investigation. Upon notification of an investigation, all information received by the public school district liaison or the school shall be subject to the provisions of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C., Section 1232g, and federal rule 34 C.F.R., Part 99.

7. The investigation shall include but not be limited to the nature, extent, and cause of the abuse or neglect; the identity and age of the person responsible for the abuse or neglect; the names and the conditions of the other children in the home, if any; the home environment and the relationship of the subject child to the parents or other persons responsible for the child's care; any indication of incidents of physical violence against any other household or family member; and other pertinent data.

8. When a report has been made by a person required to report under section 210.115, the division shall contact the person who made such report within forty-eight hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information or medical records, or both, that may be pertinent.

9. Upon completion of the investigation, if the division suspects that the report was made maliciously or for the purpose of harassment, the division shall refer the report and any evidence of malice or harassment to the local prosecuting or circuit attorney.

10. Multidisciplinary teams shall be used whenever conducting the investigation as determined by the division in conjunction with local law enforcement. Multidisciplinary teams shall be used in providing protective or preventive social services, including the services of law enforcement, a liaison of the local public school, the juvenile officer, the juvenile court, and other agencies, both public and private.

11. For all family support team meetings involving an alleged victim of abuse or neglect, the parents, legal counsel for the parents, foster parents, the legal guardian or custodian of the child, the guardian ad litem for the child, and the volunteer advocate for the child shall be provided notice and be permitted to attend all such meetings. Family members, other than alleged perpetrators, or other community informed or formal service providers that provide significant support to the child and other individuals may also be invited at the discretion of the parents of the child. In addition, the parents, the legal counsel for the parents, the legal guardian or custodian and the foster parents may request that other individuals, other than alleged perpetrators, be permitted to attend such team meetings. Once a person is provided notice of or attends such team meetings, the division or the convenor of the meeting shall provide such persons with notice of all such subsequent meetings involving the child. Families may determine whether individuals invited at their discretion shall continue to be invited.

12. If the appropriate local division personnel determine after an investigation has begun that completing an investigation is not appropriate, the division shall conduct a family assessment and

services approach. The division shall provide written notification to local law enforcement prior to terminating any investigative process. The reason for the termination of the investigative process shall be documented in the record of the division and the written notification submitted to local law enforcement. Such notification shall not preclude nor prevent any investigation by law enforcement.

13. If the appropriate local division personnel determines to use a family assessment and services approach, the division shall:

(1) Assess any service needs of the family. The assessment of risk and service needs shall be based on information gathered from the family and other sources;

(2) Provide services which are voluntary and time-limited unless it is determined by the division based on the assessment of risk that there will be a high risk of abuse or neglect if the family refuses to accept the services. The division shall identify services for families where it is determined that the child is at high risk of future abuse or neglect. The division shall thoroughly document in the record its attempt to provide voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect to the child. If the family continues to refuse voluntary services or the child needs to be protected, the division may commence an investigation;

(3) Commence an immediate investigation if at any time during the family assessment and services approach the division determines that an investigation, as delineated in sections 210.109 to 210.183, is required. The division staff who have conducted the assessment may remain involved in the provision of services to the child and family;

(4) Document at the time the case is closed, the outcome of the family assessment and services approach, any service provided and the removal of risk to the child, if it existed.

14. Within thirty days of an oral report of abuse or neglect, the local office shall update the information in the information system. The information system shall contain, at a minimum, the determination made by the division as a result of the investigation, identifying information on the subjects of the report, those responsible for the care of the subject child and other relevant dispositional information. The division shall complete all investigations within thirty days, unless good cause for the failure to complete the investigation is documented in the information system. If the investigation is not completed within thirty days, the information system shall be updated at regular intervals and upon the completion of the investigation. The information in the information system shall be updated to reflect any subsequent findings, including any changes to the findings based on an administrative or judicial hearing on the matter.

15. A person required to report under section 210.115 to the division and any person making a report of child abuse or neglect made to the division which is not made anonymously shall be informed by the division of his or her right to obtain information concerning the disposition of his or her report. Such person shall

receive, from the local office, if requested, information on the general disposition of his or her report. Such person may receive, if requested, findings and information concerning the case. Such release of information shall be at the discretion of the director based upon a review of the reporter's ability to assist in protecting the child or the potential harm to the child or other children within the family. The local office shall respond to the request within forty-five days. The findings shall be made available to the reporter within five days of the outcome of the investigation. If the report is determined to be unsubstantiated, the reporter may request that the report be referred by the division to the office of child advocate for children's protection and services established in section 37.700 to 37.730, RSMo. Upon request by a reporter under this subsection, the division shall refer an unsubstantiated report of child abuse or neglect to the office of child advocate for children's protection and services.

16. In any judicial proceeding involving the custody of a child the fact that a report may have been made pursuant to sections 210.109 to 210.183 shall not be admissible. However:

(1) nothing in this subsection shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made.

(2) The court may on its own motion, or shall if requested by a party to the proceeding, make an inquiry not on the record with the children's division to determine if such a report has been made. If a report has been made, the court may stay the custody proceeding until the children's division completes its investigation.

17. In any judicial proceeding involving the custody of a child where the court determines that the child is in need of services pursuant to subdivision (d) of subsection 1 of section 211.031, RSMo, and has taken jurisdiction, the child's parent, guardian or custodian shall not be entered into the registry.

18. The children's division is hereby granted the authority to promulgate rules and regulations pursuant to the provisions of section 207.021, RSMo, and chapter 536, RSMo, to carry out the provisions of sections 210.109 to 210.183.

19. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonserverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

(L. 1975 H.B. 578 § 8, A.L. 1980 S.B. 574, A.L. 1982 H.B. 1171, et al., A.L. 1986 S.B. 470, A.L. 1990 H.B. 1370, et al., A.L. 1993 S.B. 52, A.L. 1994 S.B. 595 2000 S.B. 757 & 602, A.L. 2002 S.B. 923, et al., A.L. 2004 H.B. 1453)

210.150. Confidentiality of reports and records, exceptions—violations, penalty.

1. The children's division shall ensure the confidentiality of all reports and records made pursuant to sections 210.109 to 210.183 and maintained by the division, its local offices, the central registry, and other appropriate persons, officials, and institutions pursuant to sections 210.109 to 210.183. To protect the rights of the family and the child named in the report as a victim, the children's division shall establish guidelines which will ensure that any disclosure of information concerning the abuse and neglect involving that child is made only to persons or agencies that have a right to such information. The division may require persons to make written requests for access to records maintained by the division. The division shall only release information to persons who have a right to such information. The division shall notify persons receiving information pursuant to subdivisions (2), (7), (8) and (9) of subsection 2 of this section of the purpose for which the information is released and of the penalties for unauthorized dissemination of information. Such information shall be used only for the purpose for which the information is released.

2. Only the following persons shall have access to investigation records contained in the central registry:

(1) Appropriate federal, state or local criminal justice agency personnel, or any agent of such entity, with a need for such information under the law to protect children from abuse or neglect;

(2) A physician or a designated agent who reasonably believes that the child being examined may be abused or neglected;

(3) Appropriate staff of the division and of its local offices, including interdisciplinary teams which are formed to assist the division in investigation, evaluation and treatment of child abuse and neglect cases or a multidisciplinary provider of professional treatment services for a child referred to the provider;

(4) Any child named in the report as a victim, or a legal representative, or the parent, if not the alleged perpetrator, or guardian of such person when such person is a minor, or is mentally ill or otherwise incompetent, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the children's division shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. The division shall provide a method for confirming or certifying that a designee is acting on behalf of a subject;

(5) Any alleged perpetrator named in the report, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the children's division shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the

determination that a person's life or safety may be in danger, the identifying information shall not be released. However, the investigation reports will not be released to any alleged perpetrator with pending criminal charges arising out of the facts and circumstances named in the investigation records until an indictment is returned or an information filed;

(6) A grand jury, juvenile officer, prosecuting attorney, law enforcement officer involved in the investigation of child abuse or neglect, juvenile court or other court conducting abuse or neglect or child protective proceedings or child custody proceedings, and other federal, state and local government entities, or any agent of such entity, with a need for such information in order to carry out its responsibilities under the law to protect children from abuse or neglect;

(7) Any person engaged in a bona fide research purpose, with the permission of the director; provided, however, that no information identifying the child named in the report as a victim or the reporters shall be made available to the researcher, unless the identifying information is essential to the research or evaluation and the child named in the report as a victim or, if the child is less than eighteen years of age, through the child's parent, or guardian provides written permission;

(8) Any child-care facility; child-placing agency; residential-care facility, including group homes; juvenile courts; public or private elementary schools; public or private secondary schools; or any other public or private agency exercising temporary supervision over a child or providing or having care or custody of a child who may request an examination of the central registry from the division for all employees and volunteers or prospective employees and volunteers, who do or will provide services or care to children. Any agency or business recognized by the children's division or business which provides training and places or recommends people for employment or for volunteers in positions where they will provide services or care to children may request the division to provide an examination of the central registry. Such agency or business shall provide verification of its status as a recognized agency. Requests for examinations shall be made to the division director or the director's designee in writing by the chief administrative officer of the above homes, centers, public and private elementary schools, public and private secondary schools, agencies, or courts. The division shall respond in writing to that officer. The response shall include information pertaining to the nature and disposition of any report or reports of abuse or neglect revealed by the examination of the central registry. This response shall not include any identifying information regarding any person other than the alleged perpetrator of the abuse or neglect;

(9) Any parent or legal guardian who inquires about a child abuse or neglect report involving a specific person or child-care facility who does or may provide services or care to a child of the person requesting the information. Request for examinations shall be

made to the division director or the director's designee, in writing, by the parent or legal guardian of the child and shall be accompanied with a signed and notarized release form from the person who does or may provide care or services to the child. The notarized release form shall include the full name, date of birth and Social Security number of the person who does or may provide care or services to a child. The response shall include information pertaining to the nature and disposition of any report or reports of abuse or neglect revealed by the examination of the central registry. This response shall not include any identifying information regarding any person other than the alleged perpetrator of the abuse or neglect. The response shall be given within ten working days of the time it was received by the division;

(10) Any person who inquires about a child abuse or neglect report involving a specific child care facility, child-placing agency, residential-care facility, public and private elementary schools, public and private secondary schools, juvenile court or other state agency. The information available to these persons is limited to the nature and disposition of any report contained in the central registry and shall not include any identifying information pertaining to any person mentioned in the report;

(11) Any state agency acting pursuant to statutes regarding a license of any person, institution, or agency which provides care for or services to children;

(12) Any child fatality review panel established pursuant to section 210.192 or any state child fatality review panel established pursuant to section 210.195;

(13) Any person who is a tenure-track or full-time research faculty member at an accredited institution of higher education engaged in scholarly research, with the permission of the director. Prior to the release of any identifying information, the director shall require the researcher to present a plan for maintaining the confidentiality of the identifying information. The researcher shall be prohibited from releasing the identifying information of individual cases.

3. Only the following persons shall have access to records maintained by the division pursuant to section 210.152 for which the division has received a report of child abuse and neglect and which the division has determined that there is insufficient evidence or in which the division proceeded with the family assessment and services approach:

(1) Appropriate staff of the division;

(2) Any child named in the report as a victim, or a legal representative, or the parent or guardian of such person when such person is a minor, or is mentally ill or otherwise incompetent. The names or other identifying information of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the children's division shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a

person's life or safety may be in danger, the identifying information shall not be released. The division shall provide for a method for confirming or certifying that a designee is acting on behalf of a subject;

(3) Any alleged perpetrator named in the report, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the children's division shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. However, the investigation reports will not be released to any alleged perpetrator with pending criminal charges arising out of the facts and circumstances named in the investigation records until an indictment is returned or an information filed;

(4) Any child fatality review panel established pursuant to section 210.192 or any state child fatality review panel established pursuant to section 210.195;

(5) Appropriate criminal justice agency personnel or juvenile officer;

(6) Multidisciplinary agency or individual including a physician or physician's designee who is providing services to the child or family, with the consent of the parent or guardian of the child or legal representative of the child;

(7) Any person engaged in bona fide research purpose, with the permission of the director; provided, however, that no information identifying the subjects of the reports or the reporters shall be made available to the researcher, unless the identifying information is essential to the research or evaluation and the subject, or if a child, through the child's parent or guardian, provides written permission.

4. Any person who knowingly violates the provisions of this section, or who permits or encourages the unauthorized dissemination of information contained in the information system or the central registry and in reports and records made pursuant to sections 210.109 to 210.183, shall be guilty of a class A misdemeanor.

5. Nothing in this section shall preclude the release of findings or information about cases which resulted in a child fatality or near fatality. Such release is at the sole discretion of the director of the department of social services, based upon a review of the potential harm to other children within the immediate family.

(L. 1975 H.B. 578 § 9, A.L. 1980 S.B. 574, A.L. 1982 H.B. 1171, et al., A.L. 1985 S.B. 401, A.L. 1986 H.B. 953, A.L. 1988 S.B. 719, A.L. 1991 H.B. 185, A.L. 1994 S.B. 595, A.L. 1997 S.B. 358, A.L. 1999 S.B. 387, et al., A.L. 2000 S.B. 757 & 602)

210.152. Reports of abuse or neglect—division to retain certain information—confidential, released only to authorized persons—report removal, when—notice of agency's deter-

mination to retain or remove, sent when—administrative review of determination—de novo judicial review.

1. All identifying information, including telephone reports reported pursuant to section 210.145, relating to reports of abuse or neglect received by the division shall be retained by the division and removed from the records of the division as follows:

(1) For investigation reports contained in the central registry, identifying information shall be retained by the division;

(2) For investigation reports initiated by a person required to report pursuant to section 210.115, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for five years from the date of the report. For all other investigation reports where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for two years from the date of the report. Such report shall include any exculpatory evidence known by the division, including exculpatory evidence obtained after the closing of the case. At the end of such two-year period, the identifying information shall be removed from the records of the division and destroyed;

(3) For reports where the division uses the family assessment and services approach, identifying information shall be retained by the division;

(4) For reports in which the division is unable to locate the child alleged to have been abused or neglected, identifying information shall be retained for ten years from the date of the report and then shall be removed from the records of the division.

2. Within ninety days after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in the report and the parents of the child named in the report, if the alleged perpetrator is not a parent, shall be notified in writing of any determination made by the division based on the investigation. The notice shall advise either:

(1) That the division has determined by a probable cause finding prior to the effective date of this section or by preponderance of the evidence after the effective date of this section that abuse or neglect exists and that the division shall retain all identifying information regarding the abuse or neglect; that such information shall remain confidential and will not be released except to law enforcement agencies, prosecuting or circuit attorneys, or as provided in section 210.150; that the alleged perpetrator has sixty days from the date of receipt of the notice to seek reversal of the division's determination through a review by the child abuse and neglect review board as provided in subsection 3 of this section; or*

(2) That the division has not made a probable cause finding or determined by preponderance of evidence that abuse or neglect exists.

3. Any person named in an investigation as a perpetrator who is aggrieved by a determination of abuse or neglect by the division as

provided in this section may seek an administrative review by the child abuse and neglect review board pursuant to the provisions of section 210.153. Such request for review shall be made within sixty days of notification of the division's decision under this section. In those cases where criminal charges arising out of facts of the investigation are pending, the request for** review shall be made within sixty days from the court's final disposition or dismissal of the charges.

4. In any such action for administrative review, the child abuse and neglect review board shall sustain the division's determination if such determination was supported by evidence of probable cause prior to the effective date of this section or is supported by a preponderance of the evidence after the effective date of this section and is not against the weight of such evidence. The child abuse and neglect review board hearing shall be closed to all persons except the parties, their attorneys and those persons providing testimony on behalf of the parties.

5. If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect review board, the alleged perpetrator may seek de novo judicial review in the circuit court in the county in which the alleged perpetrator resides and in circuits with split venue, in the venue in which the alleged perpetrator resides, or in Cole County. If the alleged perpetrator is not a resident of the state, proper venue shall be in Cole County. The case may be assigned to the family court division where such a division has been established. The request for a judicial review shall be made within sixty days of the notification of the decision of the child abuse and neglect review board decision. In reviewing such decisions, the circuit court shall provide the alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may subpoena any witnesses except the alleged victim or the reporter. However, the circuit court shall have the discretion to allow the parties to submit the case upon a stipulated record.

6. In any such action for administrative review the child abuse and neglect review board shall notify the child or the parent, guardian or legal representative of the child that a review has been requested.

(L. 1982 H.B. 1171, et al., A.L. 1986 S.B. 470, A.L. 1990 H.B. 1370, et al., A.L. 1991 H.B. 185, A.L. 1994 S.B. 595, A.L. 2000 S.B. 757 & 602, A.L. 2004 H.B. 1453)

*Word “or” does not appear in original rolls.

**Word “for” does not appear in original rolls.

210.153. Child abuse and neglect review board, established, members, duties, records, rules.

1. There is hereby created in the department of social services the "Child Abuse and Neglect Review Board", which shall provide an independent review of child abuse and neglect determinations in instances in which the alleged perpetrator is aggrieved by the

decision of the children's division. The division may establish more than one board to assure timely review of the determination.

2. The board shall consist of nine members, who shall be appointed by the governor with the advice and consent of the senate, and shall include:

(1) A physician, nurse or other medical professional;

(2) A licensed child or family psychologist, counselor or social worker;

(3) An attorney who has acted as a guardian ad litem or other attorney who has represented a subject of a child abuse and neglect report;

(4) A representative from law enforcement or a juvenile office.

3. Other members of the board may be selected from:

(1) A person from another profession or field who has an interest in child abuse or neglect;

(2) A college or university professor or elementary or secondary teacher;

(3) A child advocate;

(4) A parent, foster parent or grandparent.

4. The following persons may participate in a child abuse and neglect review board review:

(1) Appropriate children's division staff and legal counsel for the department;

(2) The alleged perpetrator, who may be represented pro se or be represented by legal counsel. The alleged perpetrator's presence is not required for the review to be conducted. The alleged perpetrator may submit a written statement for the board's consideration in lieu of personal appearance; and

(3) Witnesses providing information on behalf of the child, the alleged perpetrator or the department. Witnesses shall only be allowed to attend that portion of the review in which they are presenting information.

5. The members of the board shall serve without compensation, but shall receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties.

6. All records and information compiled, obtained, prepared or maintained by the child abuse and neglect review board in the course of any review shall be confidential information.

7. The department shall promulgate rules and regulations governing the operation of the child abuse and neglect review board except as otherwise provided for in this section. These rules and regulations shall, at a minimum, describe the length of terms, the selection of the chairperson, confidentiality, notification of parties and time frames for the completion of the review.

8. Findings of probable cause to suspect prior to the effective date of this section or findings by a preponderance of the evidence after the effective date of this section of child abuse and neglect by the division which are substantiated by court adjudication shall not be heard by the child abuse and neglect review board.

(L. 1994 S.B. 595, A.L. 2004 H.B. 1453)

210.155. Division to provide programs and information—division to continuously inform persons required to report and public as to toll-free telephones available for abuse reports.

1. The division shall, on a continuing basis, undertake and maintain programs to inform all persons required to report abuse or neglect pursuant to sections 210.110 to 210.165 and the public of the nature, problem, and extent of abuse and neglect, and of the remedial and therapeutic services available to children and their families; and to encourage self-reporting and the voluntary acceptance of such services. In addition, those mandated to report pursuant to this act shall be informed by the division of their duties, options, and responsibilities in accordance with this act.

2. The division shall conduct ongoing training programs in relation to sections 210.110 to 210.165 for agency staff.

3. The division shall continuously publicize to mandated reporters of abuse or neglect and to the public the existence and the number of the twenty-four hour, statewide toll free telephone service to receive reports of abuse or neglect.

(L. 1975 H.B. 578 § 10)
Effective 6-6-75

210.160. Guardian ad litem, how appointed—when—fee—volunteer advocates may be appointed to assist guardian—training program.

1. In every case involving an abused or neglected child which results in a judicial proceeding, the judge shall appoint a guardian ad litem to appear for and represent:

(1) A child who is the subject of proceedings pursuant to sections 210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, RSMo, or sections 453.005 to 453.170, RSMo, or proceedings to determine custody or visitation rights under sections 452.375 to 452.410, RSMo; or

(2) A parent who is a minor, or who is a mentally ill person or otherwise incompetent, and whose child is the subject of proceedings under sections 210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, RSMo, or sections 453.005 to 453.170, RSMo.

2. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person, shall have access to all records of such agencies or persons relating to the child or such child's family members or placements of the child, and upon appointment by the court to a case, shall be informed of and have the right to attend any and all family support team meetings involving the child. Employees of the division, officers of the court, and employees of any agency involved shall fully inform the guardian ad litem of all aspects of the case of which they have knowledge or belief.

3. The appointing judge shall require the guardian ad litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and appoint

another. The appointing judge shall have the authority to examine the general and criminal background of persons appointed as guardians ad litem, including utilization of the family care safe registry and access line pursuant to sections 210.900 to 210.937*, to ensure the safety and welfare of the children such persons are appointed to represent. The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the earlier proceeding, unless there is a reason on the record for not giving such preference.

4. The guardian ad litem may be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings or from public funds. However, no fees as a judgment shall be taxed against a party or parties who have not been found to have abused or neglected a child or children. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.

5. The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court. Non attorney volunteer advocates shall not provide legal representation. The court shall have the authority to examine the general and criminal background of persons designated as volunteer advocates, including utilization of the family care safety registry and access line pursuant to sections 210.900 to 210.937*, to ensure the safety and welfare of the children such persons are designated to represent. The volunteer advocate shall be provided with all reports relevant to the case made to or by any agency or person, shall have access to all records of such agencies or persons relating to the child or such child's family members or placements of the child, and upon designation by the court to a case, shall be informed of and have the right to attend any and all family support team meetings involving the child. Any such designated person shall receive no compensation from public funds. This shall not preclude reimbursement for reasonable expenses.

6. Any person appointed to perform guardian ad litem duties shall have completed a training program in permanency planning and shall advocate for timely court hearings whenever possible to attain permanency form a child as expeditiously as possible to reduce the effects that prolonged foster care may have on a child. A nonattorney volunteer advocate shall have access to a court appointed attorney guardian ad litem should the circumstances of the particular case so require.

(L. 1975 H.B. 578 § 11, A.L. 1982 H.B. 1171, et al., A.L. 1985 H.B. 366, et al., A.L. 1988 H.B.1272, et al., A.L. 1996 S.B. 869, A.L. 2004 H.B. 1453)

*Section 210.937 was repealed by S.B. 184 in 2003.

Effective 7-1-97

210.165. Penalty for violation.

1. Any person violating any provision of sections 210.110 to 210.165 is guilty of a class A misdemeanor.

2. Any person who intentionally files a false report of child abuse or neglect shall be guilty of a class A misdemeanor.

3. Every person who has been previously convicted of making a false report to the children's division and who is subsequently convicted of making a false report under subsection 2 of this section is guilty of a class D felony and shall be punished as provided by law.

4. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.

(L. 1975 H.B. 578 § 12, A.L. 1982 H.B. 1171, et al., A.L. 1986 S.B. 470)

210.166. Medical neglect of child, who may bring action—procedure.–The children's division, any juvenile officer, any physician licensed under chapter 334, RSMo, any hospital or other health care institution, and any other person or institution authorized by state or federal law to provide medical care may bring an action in the circuit court in the county where any child under eighteen years of age resides or is located, alleging the child is suffering from the denial or deprivation, by those responsible for the care, custody, and control of the child, of medical or surgical treatment or intervention which is necessary to remedy or ameliorate a medical condition which is life-threatening or causes injury. Those responsible for the care, custody and control of the child include, but is not limited to, the parents or guardian of the child, other members of the child's household, or those exercising supervision over a child for any part of a twenty-four-hour day. A petition filed under this section shall be expedited by the court involved in every manner practicable, including, but not limited to, giving such petition priority over all other matters on the court's docket and holding a hearing, at which the parent, guardian or other person having authority to consent to the medical care in question shall, after being notified thereof, be given the opportunity to be heard, and issuing a ruling as expeditiously as necessary when the child's condition is subject to immediate deterioration. Any circuit or associate circuit judge of this state shall have the authority to ensure that medical services are provided to the child when the child's health requires it.

(L. 1985 S.B. 5, et al. § 5, A.L. 1994 S.B. 595)

210.167. Report to school district on violations of compulsory school attendance law—referral by school district to prosecutor, when.–If an investigation conducted by the children's division pursuant to section 210.145 reveals that the only basis for action involves a question of an alleged violation of section 167.031, RSMo, then the local office of the division shall send the report to the school district in which the child resides. The school district shall immediately refer all private, parochial, parish or home school matters to the prosecuting attorney of the county

wherein the child legally resides. The school district may refer public school violations of section 167.031, RSMo, to the prosecuting attorney.

(L. 1984 H.B. 1255 § 1, A.L. 1985 S.B. 154 and H.B. 366, et al., A.L. 1986 S.B. 795)

210.180. Division employees to be trained.–Each employee of the division who is responsible for the investigation or family assessment of reports of suspected child abuse or neglect shall receive not less than forty hours of preservice training on the identification and treatment of child abuse and neglect. In addition to such preservice training such employee shall also receive not less than twenty hours of inservice training each year on the subject of the identification and treatment of child abuse and neglect.

(L. 1986 S.B. 470 § 1, A.L. 1994 S.B. 595)

210.183. Alleged perpetrator to be provided written description of investigation process.

1. At the time of the initial investigation of a report of child abuse or neglect, the division employee conducting the investigation shall provide the alleged perpetrator with a written description of the investigation process. Such written notice shall be given substantially in the following form:

"The investigation is being undertaken by the Children's Division pursuant to the requirements of chapter 210 of the Revised Missouri Statutes in response to a report of child abuse or neglect.

"The identity of the person who reported the incident of abuse or neglect is confidential and may not even be known to the Division since the report could have been made anonymously.

"This investigation is required by law to be conducted in order to enable the Children's Division to identify incidents of abuse or neglect in order to provide protective or preventive social services to families who are in need of such services. The division shall make every reasonable attempt to complete the investigation within thirty days. Within ninety days you will receive a letter from the Division which will inform you of one of the following:

(1) That the Division has found insufficient evidence of abuse or neglect; or

(2) That there appears to be by a preponderance of the evidence reason to suspect the existence of child abuse or neglect in the judgment of the Division and that the Division will contact the family to offer social services.

If the Division finds by a preponderance of the evidence reason to believe child abuse or neglect has occurred or the case is substantiated by court adjudication, a record of the report and information gathered during the investigation will remain on file with the Division.

If you disagree with the determination of the Division and feel that there is insufficient reason to believe by a preponderance of the

evidence that abuse or neglect has occurred, you have a right to request an administrative review at which time you may hire an attorney to represent you. If you request an administrative review on the issue, you will be notified of the date and time of your administrative review hearing by the child abuse and neglect review board. If the division's decision is reversed by the child abuse and neglect review board, the Division records concerning the report and investigation will be updated to reflect such finding. If the child abuse and neglect review board upholds the division's decision, an appeal may be filed in circuit court within sixty days of the child abuse and neglect review board's decision.

2. If the division uses the family assessment approach, the division shall at the time of the initial contact provide the parent of the child with the following information:

(1) The purpose of the contact with the family;

(2) The name of the person responding and his* or her office telephone number;

(3) The assessment process to be followed during the division's intervention with the family including the possible services available and expectations of the family.

(L. 1986 S.B. 470 § 2, A.L. 1994 S.B. 595, A.L. 2004 H.B. 1453)

*Word "their" appears in original rolls.

CHILD FATALITY REVIEW PANEL

210.192. Child fatality review panel to investigate deaths—qualifications—prosecutors and circuit attorneys to organize—report on investigations—immunity from civil liability—program for prevention.

1. The prosecuting attorney or the circuit attorney shall impanel a child fatality review panel for the county or city not within a county in which he serves to investigate the deaths of children under the age of eighteen years, who are eligible to receive a certificate of live birth. The panel shall be formed and shall operate according to the rules, guidelines and protocols provided by the department of social services.

2. The panel shall include, but shall not be limited to, the following:

(1) The prosecuting or circuit attorney;

(2) The coroner or medical examiner for the county or city not within a county;

(3) Law enforcement personnel in the county or city not within a county;

(4) A representative from the division of family services;

(5) A provider of public health care services;

(6) A representative of the juvenile court;

(7) A provider of emergency medical services.

3. The prosecuting or circuit attorney shall organize the panel and shall call the first organizational meeting of the panel. The panel shall elect a chairman who shall convene the panel to meet to review suspicious deaths of children under the age of eighteen years, who are eligible to receive a certificate of live birth, in accordance with the rules, guidelines and protocols developed by the department of social services. The panel shall issue a final report of each investigation to the department of social services, state technical assistance team and to the director of the department of health. The final report shall include a completed summary report form. The form shall be developed by the director of the department of social services in consultation with the director of the department of health. The department of health shall analyze the child fatality review panel reports and periodically prepare epidemiological reports which describe the incidence, causes, location and other factors pertaining to childhood deaths. The department of health and department of social services shall make recommendations and develop programs to prevent childhood injuries and deaths.

4. The child fatality review panel shall enjoy such official immunity as exists at common law.

(L. 1991 H.B. 185 § 1, A.L. 1991 S.B. 190 § 12, A.L. 1994 S.B. 595, A.L. 2000 S.B. 757 & 602)

210.194. Panels, coroners and medical examiners—rules authorized for protocol and identifying suspicious deaths, procedure.

1. The director of the department of social services, in consultation with the director of the department of health, shall promulgate rules, guidelines and protocols for child fatality review panels established pursuant to section 210.192 and for state child fatality review panels.

2. The director shall promulgate guidelines and protocols for coroner and medical examiners to use to help them to identify suspicious deaths of children under the age of eighteen years, who are eligible to receive a certificate of live birth.

3. No rule or portion of a rule promulgated under the authority of sections 210.192 to 210.196 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

4. All meetings conducted, all reports and records made and maintained pursuant to sections 210.192 to 210.196 by the department of social services and department of health and its divisions, including the state technical assistance team, or other appropriate persons, officials, or state child fatality review panel and local child fatality review panel shall be confidential and shall not be open to the general public except for the annual report pursuant to section 210.195.

(L. 1991 H.B. 185 § 2, A.L. 1993 S.B. 52, A.L. 1994 S.B. 595, A.L. 1995 S.B. 3)

210.195. State technical assistance team, duties—regional coordinators, appointment, duties—state child fatality review panel, appointment, duties, annual report, content.

1. The director of the department of social services shall establish a special team which shall:

(1) Develop and implement protocols for the evaluation and review of child fatalities;

(2) Provide training, expertise and assistance to county child fatality review panels for the review of child fatalities;

(3) When required and unanimously requested by the county fatality review panel, assist in the review and prosecution of specific child fatalities; and

(4) The special team may be known as the department of social services, state technical assistance team.

2. The director of the department of social services shall appoint regional coordinators to serve as resources to child fatality review panels established pursuant to section 210.192.

3. The director of the department of social services shall appoint a state child fatality review panel which shall meet at least biannually to provide oversight and make recommendations to the department of social services, state technical assistance team. The department of social services, state technical assistance team shall gather data from local child fatality review panels to identify systemic problems and shall submit findings and recommendations to the director of the department of social services, the governor, the speaker of the house of representatives, the president pro tempore of the senate, the children's services commission, juvenile officers, and the chairman of the local child fatality review panel, at least once a year, on ways to prevent further child abuse and injury deaths.

(L. 1991 H.B. 185 § 3, A.L. 1994 S.B. 595, A.L. 2000 S.B. 757 & 602)

210.196. Hospitals and physicians, rules authorized for protocol and identifying suspicious deaths—child death pathologist, qualification, certification—rules, procedure—records, disclosure.

1. The director of the department of health and senior services, in consultation with the director of the department of social services, shall promulgate rules, guidelines and protocols for hospitals and physicians to use to help them to identify suspicious deaths of children under the age of eighteen years, who are eligible to receive a certificate of live birth.

2. The director of the department of health and senior services shall promulgate rules for the certification of child death pathologists and shall develop protocols for such pathologists. A certified child death pathologist shall be a board-certified forensic pathologist or a board-certified pathologist who through special training or experience is deemed qualified in the area of child fatalities by the department of health and senior services.

3. Except as provided in section 630.167, RSMo, any hospital, physician, medical professional, mental health professional, or department of mental health facility shall disclose upon request all records, medical or social, of any child eligible to receive a certificate of live birth under the age of eighteen who has died to the coroner or medical examiner, division of family services representative, or public health representative who is a member of the local child fatality review panel established pursuant to section 210.192 to investigate the child's death. Any legally recognized privileged communication, except that between attorney and client, shall not apply to situations involving the death of a child under the age of eighteen years, who is eligible to receive a certificate of live birth.

(L. 1991 H.B. 185 § 4, A.L. 1993 S.B. 52, A.L. 1994 S.B. 595, A.L. 1995 S.B. 3)

EMERGENCY PLACEMENT

210.622. Emergency placement of abused or neglected children across the state lines, approval required, when.— Notwithstanding the provisions of section 210.620, the division of family services may enter into an agreement with simular agency in any state adjoining Missouri that provides for the emergency placement of abused or neglect children across state lines, without the prior approval required by the interstate compact. A request for approval pursuant to section 210.620 shall be initiated if the placement extends beyond thirty days.

(L. 1985 H.B. 711)

FAMILY CARE SAFETY REGISTRY

210.903. Family care safety registry and access line established.

1. To protect children, the elderly, and disabled individuals in this state, and to promote family and community safety by providing information concerning family caregivers, there is hereby established within the department of health and senior services a "Family Care Safety Registry and Access Line" which shall be available by January 1, 2001.

2. The family care safety registry shall contain information on child-care workers', elder-care workers', and personal-care workers' background and on child-care, elder-care and personal-care providers through:

(1) The patrol's criminal record check system pursuant to section 43.540,RSMo, including state and national information, to the extent possible;

(2) Probable cause findings abuse and neglect prior to the effective date of this section or findings of abuse and neglect by preponderance of the evidence after the effective date of this section pursuant to section 210.109 to 210.183 and, as of January 1, 2003, financial exploitation of elderly or disabled, pursuant to section 570.145,RSMo;

(3) The division of aging's employee disqualification list pursuant to section 660.315,RSMo;

(4) As of January 1, 2003, the department of mental health's employee disqualification registry;

(5) Foster parent licensure denials, revocations and involuntary suspensions pursuant to section 210.496;

(6) Child-care facility license denials, revocations and suspensions pursuant to sections 210.201 to 210.259; and

(7) Residential living facility and nursing home license denials, revocations, suspensions and probationary status pursuant to chapter 198, RSMo; and

(8) As of January 1, 2004, a check of the patrol's Missouri uniform law enforcement system (MULES) for sexual offender registrations pursuant to section 589.400 RSMo.

(L. 1999 H.B. 490 & H.B. 308 § 4, A.L. 2001 S.B. 48, A.L. 2004 H.B. 1453)

Expires 1-1-04

210.906. Registration form, contents—violation, penalty—fees—voluntary registration permitted, when.

1. Every child-care worker or elder-care worker hired on or after January 1, 2001, or personal-care worker hired on or after January 1, 2002, shall complete a registration form provided by the department. The department shall make such forms available no later than January 1, 2001, and may, by rule, determine the specific content of such form, but every form shall:

(1) Request the valid Social Security number of the applicant;

(2) Include information on the person's right to appeal the information contained in the registry pursuant to section 210.912;

(3) Contain the signed consent for the application contained in the background check for employment purposes only.

(4) Contain the signed consent for the release of information contained in the background check for employment purposes only.

2. Every child-care worker or elder-care worker hired on or after January 1, 2001, and every personal-care worker hired on or after January 1, 2002, shall complete a registration form within fifteen days of the beginning of such person's employment. Any person employed as child-care, elder-care or personal-care worker who fails to submit a completed registration form to the department of health and senior services as required by sections 210.900 to 210.936 without good cause, as determined by the department, is guilty of a class B misdemeanor.

(3) The cost of the criminal background check may be paid by the individual applicant, or by the provider if the applicant is so employed, or for those applicants receiving public assistance, by the state through the terms of the self-sufficiency pact pursuant to section 208.325,RSMo. Any moneys remitted to the patrol for the cost of the criminal background check shall be deposited to the credit of the criminal record system fund as required by section 43.530, RSMo.

(4) Any person licensed pursuant to section 210.481 to 210.565 shall be automatically registered in the family care safety registry at no additional cost other than the cost required pursuant to section 210.481 to 210.565.

(5) Any person not required to register pursuant to the provisions of section 210.900 to 210.936 may also be included in the registry if such person voluntarily applies to the department for registration and meets the requirements of this section and section 210.909, including submitting to the background checks in subsection of section 210.909.

(6) The provisions of sections 210.900 to 210.936 shall not extend to related child care, related elder care or related personal care.

(L. 1999 H.B. 490 & H.B. 308 § 5, A.L. 2001 S.B. 48, A.L. 2002 S.B. 923, et al.)

Expires 1-1-04

210.909. Department duties—information included in registry, when—registrant notification.

1. Upon submission of a completed registration form by a child-care worker, elder-care worker or personal-care attendant, the department shall:

(1) Determine if a probable cause finding of child abuse or neglect prior to the effective date of this section or a finding of child abuse or neglect by preponderance of the evidence after the effective date of this section involving the applicant has been recorded pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly or disabled pursuant to section 570.145, RSMo;

(2) Determine if the applicant has been refused licensure or has experienced involuntary licensure suspension or revocation pursuant to section 210.496;

(3) Determine if the applicant has been placed on the employee disqualification list pursuant to section 660.315, RSMo;

(4) As of January 1, 2003, determine if the applicant is listed on the department of mental health's employee disqualification registry;

(5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether the applicant has any criminal history record for a felony or misdemeanor or any offense for which the person has registered pursuant to sections 589.400 to 5489.425 RSMo.

(6) If the background check involves a provider, determine if a facility has been refused licensure or has experienced licensure suspension, revocation or probationary status pursuant to sections 210.201 to 210.259 or chapter 198, RSMo; and

(7) As of January 1, 2004, determine through a request to the patrol if the applicant is a registered sexual offender pursuant to section 589.400 RSMo, listed in the Missouri uniform law enforcement system (MULES).

2. Upon completion of the background check described in subsection 1 of this section, the department shall include information in the registry for each registrant as to whether any convictions, employee disqualification listings, registry listings, probable cause findings, pleas of guilty or nolo contendere, or license denial, revocation or suspension have been documented through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

3. The department shall notify such registrant in writing of the results of the determination recorded on the registry pursuant to this section.

(L. 1999 H.B. 490 & H.B. 308 § 6, A.L. 2001 S.B. 48, A.L. 2003 S.B. 184, A.L. 2004 H.B. 1453)

210.912. Right to appeal, procedure.—The department's registration form for the family care safety registry and the department's notification pursuant to subsection 1 of section 210.906 and subsection 3 of section 210.909 shall advise the person of a right to appeal the information contained in the registry. Such right to appeal shall be limited only to the accuracy in the transfer of information to the registry and shall not include a right to appeal the accuracy of the substance of the information transferred. Any such appeal shall be filed in writing at the office of the director of the department of health and senior services within thirty days of receiving the results of the determination. An administrative appeal shall be set within thirty days of the filing of the appeal and a decision shall be made within sixty days. If the appeal is decided in favor of such person, the person's records shall be restored in the registry along with a copy of the hearing decision. If the appeal is decided against such person, the person may seek judicial review of such decision pursuant to sections 536.100 to 536.150, RSMo. An applicant's right to appeal herein is in addition to any other appeal rights granted by state law.

(L. 1999 H.B. 490 & H.B. 308 § 7)

210.915. Departmental collaboration on registry information—rulemaking authority.—The department of corrections, the department of public safety, the department of social services and the department of mental health shall collaborate with the department to compare records on child- care, elder-care and

personal-care workers, and the records of persons with criminal convictions and the background checks pursuant to subdivisions (1) to (6) of subsection 2 of section 210.903, and to enter into any interagency agreements necessary to facilitate the receipt of such information and the ongoing updating of such information. The department shall promulgate rules and regulations concerning such updating, including subsequent background reviews as listed in subsection 1 of section 210.909.

(L. 1999 H.B. 490 & H.B. 308 § 8, A.L. 2001 S.B. 48)

210.918. Toll-free telephone service maintained for access to information.—The department shall establish and maintain a toll-free telephone service to promote family and community safety by allowing access to certain information recorded in the registry, as provided in section 210.921. The department shall develop strategies to promote public awareness of the family care safety registry and toll-free telephone service.

(L. 1999 H.B. 490 & H.B. 308 § 9)

210.921. Release of registry information, when—limitations of disclosure—immunity from liability, when.

1. The department shall not provide any registry information pursuant to this section unless the department obtains the name and address of the person calling, and determines that the inquiry is for employment purposes only. For purposes of sections 210.900 to 210.936, "employment purposes" includes direct employer-employee relationships, prospective employer-employee relationships, and screening and interviewing of persons or facilities by those persons contemplating the placement of an individual in a child-care, elder-care or personal-care setting. Disclosure of background information concerning a given applicant recorded by the department in the registry shall be limited to:

(1) Confirming whether the individual is listed in the registry; and

(2) Indicating whether the individual has been listed or named in any of the background checks listed in subsection 2 of section 210.903. If such individual has been so listed, the department of health and senior services shall only disclose the name of the background check in which the individual has been identified. With the exception of any agency licensed by the state to provide child care, elder care or personal care which shall receive specific information immediately if requested, any specific information related to such background check shall only be disclosed after the department has received a signed request from the person calling, with the person's name, address and reason for requesting the information.

2. Any person requesting registry information shall be informed that the registry information provided pursuant to this section consists only of information relative to the state of Missouri and

does not include information from other states or information that may be available from other states.

3. Any person who uses the information obtained from the registry for any purpose other than that specifically provided for in sections 210.900 to 210.936 is guilty of a class B misdemeanor.

4. When any registry information is disclosed pursuant to subdivision (2) of subsection 1 of this section, the department shall notify the registrant of the name and address of the person making the inquiry.

5. The department of health and senior services staff providing information pursuant to sections 210.900 to 210.936 shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions; provided, however, any department of health and senior services staff person who releases registry information in bad faith or with ill intent shall not have immunity from any liability, civil or criminal. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the release of registry information. The department is prohibited from selling the registry or any portion of the registry for any purpose including "employment purposes" as defined in subsection 1 of this section.

(L. 1999 H.B. 490 & H.B. 308 § 10, A.L. 2001 S.B. 48)

210.922. Use of registry information by the department, when.—The department of health and senior services, department of mental health, and department of social services may use the registry information to carry out the duties assigned to the department pursuant to this chapter and chapters 190, 195, 197, 198, 630, and 660 RSMo.

(L. 2001 S.B. 48, A.L. 2003 S.B. 184)

SAFE PLACE FOR NEWBORNS ACT

210.950. Safe place for newborns act—definitions—procedure—immunity from liability.

1. This section shall be known and may be cited as the "Safe Place for Newborns Act of 2002". The purpose of this section is to protect newborn children from injury and death caused by abandonment by a parent, and to provide safe and secure alternatives to such abandonment.

2. As used in this section, the following terms mean:

(1) **"Hospital"**, as defined in section 197.020, RSMo;

(2) **"Nonrelinquishing parent"**, the biological parent who does not leave a newborn infant with any person listed in subsection 3 of this section in accordance with this section;

(3) **"Relinquishing parent"**, the biological parent or person acting

on such parent's behalf who leaves a newborn infant with any person listed in subsection 3 of this section in accordance with this section.

3. A parent shall not be prosecuted for a violation of section 568.030, 568.032, 568.045 or 568.050, RSMo, for actions related to the voluntary relinquishment of a child up to five days old pursuant to this section and it shall be an affirmative defense to prosecution for a violation of sections 568.030, 568.032, 568.045 and 568.050, RSMo, that a parent who is a defendant voluntarily relinquished a child no less than six days old but no more than thirty days old pursuant to this section if:

(1) Expressing intent not to return for the child, the parent voluntarily delivered the child safely to the physical custody of any of the following persons:

(a) An employee, agent, or member of the staff of any hospital, in a health care provider position or on duty in a nonmedical paid or volunteer position;

(b) A firefighter or emergency medical technician on duty in a paid position or on duty in a volunteer position; or

(c) A law enforcement officer;

(2) The child was no more than thirty days old when delivered by the parent to any person listed in subdivision (1) of this subsection; and

(3) The child has not been abused or neglected by the parent prior to such voluntary delivery.

4. A person listed in subdivision (1) of subsection 3 of this section shall, without a court order, take physical custody of a child the person reasonably believes to be no more than thirty days old and is delivered in accordance with this section by a person purporting to be the child's parent. If delivery of a newborn is made pursuant to this section in any place other than a hospital, the person taking physical custody of the child shall arrange for the immediate transportation of the child to the nearest hospital licensed pursuant to chapter 197, RSMo.

5. The hospital, its employees, agents and medical staff shall perform treatment in accordance with the prevailing standard of care as necessary, to protect the physical health or safety of the child. The hospital shall notify the division of family services and the local juvenile officer upon receipt of a child pursuant to this section. The local juvenile officer shall immediately begin protective custody proceedings and request the child be made a ward of the court during the child's stay in the medical facility. Upon discharge of the child from the medical facility and pursuant to a protective custody order ordering custody of the child to the division, the division of family services shall take physical custody of the child. The parent's voluntary delivery of the child in accordance with this section shall constitute the parent's implied consent to any such act and a voluntary relinquishment of such parent's parental rights.

6. In any termination of parental rights proceeding initiated after the relinquishment of a child pursuant to this section, the juvenile

officer shall make public notice that a child has been relinquished, including the sex of the child, and the date and location of such relinquishment. Within thirty days of such public notice, the nonrelinquishing parent wishing to establish parental rights shall identify himself or herself to the court and state his or her intentions regarding the child. The court shall initiate proceedings to establish paternity, or if no person identifies himself as the father within thirty days, maternity. The juvenile officer shall make examination of the putative father registry established in section 192.016, RSMo, to determine whether attempts have previously been made to preserve parental rights to the child. If such attempts have been made, the juvenile officer shall make reasonable efforts to provide notice of the abandonment of the child to such putative father.

7. (1) If a relinquishing parent of a child relinquishes custody of the child to any person listed in subsection 3 of this section in accordance with this section and to preserve the parental rights of the nonrelinquishing parent, the nonrelinquishing parent shall take such steps necessary to establish parentage within thirty days after the public notice or specific notice provided in subsection 6 of this section.

(2) If a nonrelinquishing parent fails to take steps to establish parentage within the thirty-day period specified in subdivision (1) of this subsection, the nonrelinquishing parent may have all of his or her rights terminated with respect to the child.

(3) When a nonrelinquishing parent inquires at a hospital regarding a child whose custody was relinquished pursuant to this section, such facility shall refer the nonrelinquishing parent to the division of family services and the juvenile court exercising jurisdiction over the child.

8. The persons listed in subdivision (1) of subsection 3 of this section shall be immune from civil, criminal, and administrative liability for accepting physical custody of a child pursuant to this section if such persons accept custody in good faith. Such immunity shall not extend to any acts or omissions, including negligent or intentional acts or omissions, occurring after the acceptance of such child.

9. The division of family services shall:

(1) Provide information and answer questions about the process established by this section on the statewide, toll-free telephone number maintained pursuant to section 210.145;

(2) Provide information to the public by way of pamphlets, brochures, or by other ways to deliver information about the process established by this section.

10. Nothing in this section shall be construed as conflicting with section 210.125.

(L. 2002 H.B. 1443)

CHAPTER 211, RSMo
JUVENILE COURTS

211.011. Purpose of law—how construed.–The purpose of this chapter is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. This chapter shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control as will conduce to the child's welfare and the best interests of the state, and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them. The child welfare policy of this state is what is in the best interests of the child.

(L. 1957 p. 642 § 211.010, A.L. 1995 H.B. 232 & 485 and S.B. 174)

(1968) Procedure of juvenile court which resulted in commitment to state training school did not violate constitutional protection as set forth by U.S. Supreme Court in the case of application of Gault. Ex parte de Grace (A.), 425 S.W.2d 228.

(1972) Missouri's Juvenile Act is rooted in the concept of parens patriae and the functions of a juvenile officer and a prosecuting attorney are so inherently conflicting that proper administration of the Juvenile Act does not allow these functions to be exercised by a person holding both offices. Thus, juvenile court, located in county in judicial circuit comprised only of counties of the third class, was without jurisdiction to proceed on petition filed by such juvenile officer. In re F_____C_____(A.), 484 S.W.2d 21.

(1977) Jurisdiction of divorce or dissolution of marriage remains in circuit court where it was filed but jurisdictions of cause as it relates to child custody may in some instances be superseded by juvenile court. Ex parte J.A.P. (A.), 546 S.W.2d 806.

211.031. Juvenile court to have exclusive jurisdictions, when—exceptions–home schooling, attendance violations, how treated.

1. Except as otherwise provided in this chapter, the juvenile court or the family court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall have exclusive original jurisdiction in proceedings:

(1) Involving any child or person seventeen years of age who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The parents, or other persons legally responsible for the care and support of the child or person seventeen years of age, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his or her well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child or person seventeen years of age shall not be construed as

neglect when the treatment is recognized or permitted pursuant to the laws of this state;

(b) The child or person seventeen years of age is otherwise without proper care, custody or support; or

(c) The child or person seventeen years of age was living in a room, building or other structure at the time such dwelling was found by a court of competent jurisdiction to be a public nuisance pursuant to section 195.130, RSMo;

(d) The child or person seventeen years of age is a child in need of mental health services and the parent, guardian or custodian is unable to afford or access appropriate mental health treatment or care for the child;

(2) Involving any child who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or

(b) The child disobeys the reasonable and lawful directions of his or her parents or other custodian and is beyond their control; or

(c) The child is habitually absent from his or her home without sufficient cause, permission, or justification; or

(d) The behavior or associations of the child are otherwise injurious to his or her welfare or to the welfare of others; or

(e) The child is charged with an offense not classified as criminal, or with an offense applicable only to children; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(3) Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of the circuit in which the child or person resides or may be found or in which the violation is alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product, and except that the juvenile court shall have concurrent jurisdiction with the municipal court over any child who is alleged to have violated a municipal curfew ordinance;

(4) For the adoption of a person;

(5) For the commitment of a child or person seventeen years of age to the guardianship of the department of social services as provided by law.

2. Transfer of a matter, proceeding, jurisdiction or supervision for a child or person seventeen years of age who resides in a county of this state shall be made as follows:

(1) Prior to the filing of a petition and upon request of any party or at the discretion of the juvenile officer, the matter in the interest of a child or person seventeen years of age may be transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving court, to the county of the child's residence or the residence of the person seventeen years of age for future action;

(2) Upon the motion of any party or on its own motion prior to final disposition on the pending matter, the court in which a proceeding is commenced may transfer the proceeding of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age, or the county in which the offense pursuant to subdivision (3) of subsection 1 of this section is alleged to have occurred for further action;

(3) Upon motion of any party or on its own motion, the court in which jurisdiction has been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age for further action with the prior consent of the receiving court;

(4) Upon motion of any party or upon its own motion at any time following a judgment of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause may place the child or person seventeen years of age under the supervision of another juvenile court within or without the state pursuant to section 210.570, RSMo, with the consent of the receiving court;

(5) Upon motion of any child or person seventeen years of age or his or her parent, the court having jurisdiction shall grant one change of judge pursuant to Missouri Supreme Court Rules;

(6) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child or person seventeen years of age, certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the transferring juvenile court shall accompany the transfer.

3. In any proceeding involving any child or person seventeen years of age taken into custody in a county other than the county of the child's residence or the residence of a person seventeen years of age, the juvenile court of the county of the child's residence or the residence of a person seventeen years of age shall be notified of such taking into custody within seventy-two hours.

4. When an investigation by a juvenile officer pursuant to this section reveals that the only basis for action involves an alleged violation of section 167.031, RSMo, involving a child who alleges to be home schooled, the juvenile officer shall contact a parent or parents of such child to verify that the child is being home schooled and not in violation of section 167.031, RSMo, before making a report of such a violation. Any report of a violation of section 167.031, RSMo, made by a juvenile

officer regarding a child who is being home schooled shall be made to the prosecuting attorney of the county where the child legally resides.

(L. 1957 p. 642 § 211.030, A.L. 1976 S.B. 511, A.L. 1980 S.B. 512, A.L. 1983 S.B. 368, A.L. 1989 H.B. 502, et al., A.L. 1990 H.B. 1030, A.L. 1991 H.B. 202 & 364, A.L. 1993 H.B. 346, A.L. 1999 S.B. 1, et al., A.L. 2002 S.B. 923, et al., A.L. 2004 H.B. 1453 merged with S.B. 945 and S.B. 803 & 1257 merged with S.B. 1211)

211.059. Rights of child when taken into custody (Miranda warning)–rights of child in custody in abuse and neglect cases.

1. When a child is taken into custody by a juvenile officer or law enforcement official, with or without a warrant for an offense in violation of the juvenile code or the general law which would place the child under the jurisdiction of the juvenile court pursuant to subdivision (2) or (3) of subsection 1 of section 211.031, the child shall be advised prior to questioning:

(1) That he has the right to remain silent; and

(2) That any statement he does make to anyone can be and may be used against him; and

(3) That he has a right to have a parent, guardian or custodian present during questioning; and

(4) That he has a right to consult with an attorney and that one will be appointed and paid for him if he cannot afford one.

2. If the child indicates in any manner and at any stage of questioning pursuant to this section that he does not wish to be questioned further, the officer shall cease questioning.

3. When a child is taken into custody by a juvenile officer or law enforcement official which places the child under the jurisdiction of the juvenile court under subdivision (1) of subsection 1 of section 211.031, including nay interactions with the child by the children's division, the following shall apply:

(1) If the child indicates in any manner at any stage during questioning involving the alleged abuse and neglect that the child does not wish to be questioned any further on the allegations, or that the child wishes to have his or her parent, legal guardian, or custodian if such parent, guardian, or custodian is not the alleged perpetrator, or his or her attorney present during questioning as to the alleged abuse, the questioning of the child shall cease on the alleged abuse and neglect until such a time that the child does not object to talking about the alleged abuse and neglect unless the interviewer has reason to believe that the parent, legal guardian, or custodian is acting to protect the alleged perpetrator. Nothing in this subdivision shall be construed to prevent the asking of any questions necessary for the care, treatment, or placement of a child; and

(2) Notwithstanding any prohibition of heresay evidence, all video or audio recordings of any meetings, interviews, or interrogations of a child shall be presumed admissible as evidence in any court or administrative proceeding involving the child if the following conditions are met:

(a) Such meetings, interviews, or interrogations of the child are

conducted by the state prior to or after the child is taken into custody of the state; and

(b) Such video or audio recordings were made prior to the adjudication hearing in the case. Nothing in this paragraph shall be construed to prohibit the videotaping or audiotaping of any such meetings, interviews, or interrogations of a child after the adjudication hearing; and

(3) Only upon a showing by clear and convincing evidence that such a video or audio recording lacks sufficient indicia of reliability shall such recording be inadmissible.

The provisions of this subsection shall not apply to statements admissible under section 491.075 or 492.304, RSMo, in criminal proceedings.

(L. 1989 H.B. 502, et al., A.L. 2004 H.B. 1453)

211.180. Family preservation screenings, conducted when, results.–Family preservation screenings shall be conducted by the division of family services within seventy-two hours of the removal of a child from the home and placement in the custody of the court. The results of this screening shall be submitted to the juvenile court judge for consideration in the order of disposition or treatment of the child.

(L. 1994 S.B. 595)

211.231. Indeterminate commitments, exception—exchange of information by court and institution or agency.

1. All commitments made by the juvenile court shall be for an indeterminate period of time, unless the child is committed pursuant to subdivision (3) of subsection 3 of section 211.181, and shall not continue beyond the child's twenty-first birthday

2. Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the institution or agency shall give to the court such information concerning the child as the court may require from time to time so long as the child is under the jurisdiction of the juvenile court.

(L. 1957 p.642 § 211.210, A.L. 1995 H.B. 174, et al.)

211.425. Registration of juvenile sex offenders, when—agencies required to registry maintained—confidentiality of registry—penalty for failure to register—termination of requirement, when.

1. Any person who has been adjudicated a delinquent by a juvenile court for committing or attempting to commit a sex-related offense which if committed by an adult would be considered a felony offense pursuant to chapter 566, RSMo, including, but not limited to, rape, forcible sodomy, child molestation and sexual abuse, shall be considered a juvenile sex offender and shall be required to register as a juvenile sex offender by complying with the registration requirements provided for in this section. This requirement shall also apply to any person who is or has been adjudicated a juvenile delinquent in any other state or federal jurisdiction for committing or attempting to commit offenses which would be proscribed herein.

2. Any state agency having supervision over a juvenile required to register as a juvenile sex offender or any court having jurisdiction over a juvenile required to register as a juvenile sex offender, or any person required to register as a juvenile sex offender, shall, within ten days of the juvenile offender moving into any county of this state, register with the juvenile office of the county. If such juvenile offender changes residence or address, the state agency, court or person shall inform the juvenile office within ten days of the new residence or address and shall also be required to register with the juvenile office of any new form provided for in section 589.407, RSMo. Such form shall include, but not limited to, the following:

(1) A statement in writing signed by the juvenile, giving the juvenile's name, address, Social Security number, phone number, school in which enrolled, place of employment, offense which requires registration, including the date, place, and a brief description of such offense, date and place of adjudication regarding such offense, and age and gender of the victim at the time of the offense; and

(2) The fingerprints and photograph of the juvenile.

3. Juvenile offices shall maintain the registration forms of those juvenile offenders in their jurisdictions who register as required by this section. Information contained on the registration forms shall be kept confidential and may be released by juvenile offices to only those persons and agencies who are authorized to receive information from juvenile court records as provided by law, including, but not limited to, those specified in section 211.321. State agencies having custody of juveniles who fall within the registration requirements of this section shall notify the appropriate juvenile offices when such juvenile offenders are being transferred to a location falling within the jurisdiction of such juvenile offices.

4. Any juvenile who is required to register pursuant to this section but fails to do so or who provides false information on the registration form is subject to disposition pursuant to this chapter. Any person seventeen years of age or over who commits such violation is guilty of a class A misdemeanor as provided for in section 211.431.

5. Any juvenile to whom the registration requirement of this section applies shall be informed by the official in charge of the juvenile's custody, upon the juvenile's discharge or release from such custody, of the requirement to register pursuant to this section. Such official shall obtain the address where such juvenile expects to register upon being discharged or released and shall report the juvenile's name and address to the juvenile office where the juvenile will be required to register. This requirement to register upon discharge or release from custody does not apply in situations where the juvenile is temporarily released under guard or direct supervision from a detention facility or similar custodial facility.

6.The requirement to register as a juvenile sex offender shall terminate upon the juvenile offender reaching age twenty-one, unless such juvenile offender is required to register as an adult offender pursuant to section 589.400, RSMo.

(L. 1999 H.B. 348)

CHAPTER 219, RSMo
YOUTH SERVICES

219.061. Aiding runaway, penalty—peace officers, duty of—records confidential, exceptions, penalty for divulging—division may sue for damages.

1. Any person who knowingly permits or aids any child to run away from an institution under the control of the division or conceals the child with intent of enabling him to elude pursuit is guilty of a misdemeanor, and upon conviction, shall be punished as provided by law.

2. It shall be the duty of every law enforcement official, and any official who is designated by the division, to detain, with or without a warrant, any child who shall have run away from a facility and to hold him subject to the orders of the division.

3. Disclosure of any information contained in the records of the division relating to any child committed to it shall be made only in accordance with regulations prescribed by the division, provided that such regulations shall provide for full disclosure of such information to the parents or guardians, or if they be out of this state to the nearest immediate relative of such child, upon reasonable notice and demand and to the child fatality review panel reviewing the death of a child pursuant to section 210.192, RSMo. Any employee or officer of the division who shall communicate any such information in violation of any such regulations may be subject to immediate discharge.

4. For all damages to the division or to any property, real or personal, belonging thereto, actions may be maintained in the name of the division as such, and all damages levied in such actions shall be paid into the state treasury and, upon appropriation, shall be used by the division.

(L. 1975 S.B. 170 § 12, A.L. 1994 S.B. 595)

CHAPTER 58, RSMo
CORONERS AND INQUESTS

INQUESTS

58.452. Child's death under age eighteen, notice to coroner by persons having knowledge—referral to child fatality review panel, when—procedure for nonsuspicious death, form, duties—autopsy, child death pathologist, when—disagreement on need for autopsy, procedure—violation by coroner, penalty.

1. When any person, in any county in which a coroner is required by section 58.010, dies and there are reasonable grounds to believe

that such person was less than eighteen years of age, who is eligible to receive a certificate of live birth, the police, sheriff, law enforcement officer or official, health practitioner or hospital or any person having knowledge of such a death shall immediately notify the coroner of the known facts concerning the time, place, manner and circumstances of the death. The coroner shall notify the division of the child's death pursuant to section 210.115, RSMo. The coroner shall immediately evaluate the necessity for child fatality review and shall immediately notify the chairman of the child fatality review panel. The child fatality review panel shall be activated within twenty-four hours of such notice to review any death which includes one or more of the suspicious circumstances described in the protocol developed by the department of social services, state technical assistance team pursuant to section 210.194, RSMo.

2. If the coroner determines that the death of the person under age eighteen years, who is eligible to receive a certificate of live birth, does not include any suspicious circumstances listed in the protocol, the coroner shall complete a nonsuspicious child death form provided by the department of social services, state technical assistance team and have the form cosigned by the chairman of the child fatality review panel and forward the original to the department of social services, state technical assistance team within forty-eight hours of receiving notice of the child's death.

3. When a child under the age of eighteen years, who is eligible to receive a certificate of live birth dies, the coroner shall notify a certified child death pathologist to determine the need for an autopsy. The certified child death pathologist, in conjunction with the coroner, shall determine the need for an autopsy. If there is disagreement concerning the need for the autopsy, the certified child death pathologist shall make the determination unless the child fatality review panel, within twelve hours, decides against the certified child death pathologist.

4. When there is a disagreement regarding the necessity for an autopsy, the certified child death pathologist shall file a report with the chairman of the child fatality review panel indicating the basis for the disagreement. The pathologist's report on the disagreement shall be included in the report to the department of social services, state technical assistance team. If an autopsy is determined necessary, the autopsy shall be performed by a certified child death pathologist within twenty-four hours of receipt of the body by the pathologist or within twenty-four hours of the agreement by the pathologist to perform the autopsy, whichever occurs later.

5. Knowing failure by a coroner to refer a suspicious death of a child under the age of eighteen years, who is eligible to receive a certificate of live birth, to a child fatality review panel or to a certified child death pathologist is a class A misdemeanor.

(L. 1991 H.B. 185, A.L. 1994 S.B. 595)

58.722. Child's death under age eighteen, notice to medical examiner by persons having knowledge—referral to child fatality review panel, when—procedure for nonsuspicious death, form, duties—autopsy, child death pathologist, when—disagreement on need for autopsy, procedure—violation by medical examiner, penalty.

1. When any person dies within a county having a medical examiner and there are reasonable grounds to believe that such person was less than eighteen years of age, who was eligible to receive a certificate of live birth, the police, sheriff, law enforcement officer or official, or any person having knowledge of such a death shall immediately notify the medical examiner of the known facts concerning the time, place, manner and circumstances of the death. The medical examiner shall notify the division of the child's death pursuant to section 210.115, RSMo. The medical examiner shall immediately evaluate the necessity for child fatality review and shall immediately notify the chairman of the child fatality review panel. The child fatality review panel shall be activated within twenty-four hours of such notice to review any death which includes one or more of the suspicious circumstances described in the protocol developed by the department of social services, state technical assistance team pursuant to section 210.194, RSMo.

2. If the medical examiner determines that the death of the person under age eighteen years, who is eligible to receive a certificate of live birth, does not include any suspicious circumstances listed in the protocol, the medical examiner shall complete a nonsuspicious child death form provided by the department of social services, state technical assistance team, have the form cosigned by the chairman of the child fatality review panel and forward the original to the department of social services, state technical assistance team within forty-eight hours of receiving notice of the child's death.

3. When a child under the age of eighteen years, who is eligible to receive a certificate of live birth, dies, the medical examiner shall notify a certified child death pathologist to determine the need for an autopsy. The certified child death pathologist, in conjunction with the medical examiner, shall determine the need for an autopsy. If there is disagreement concerning the need for the autopsy, the certified child death pathologist shall make the determination unless the child fatality review panel, within twelve hours, decides against the certified child death pathologist.

4. When there is a disagreement regarding the necessity for an autopsy, the certified child death pathologist shall file a report with the chairman of the child fatality review panel indicating the basis for the disagreement. The pathologist's report on the disagreement shall be included in the report to the department of social services, state technical assistance team. If an autopsy is determined

necessary, the autopsy shall be performed by a certified child death pathologist within twenty-four hours of receipt of the body by the pathologist or within twenty-four hours of the agreement by the pathologist to perform the autopsy, whichever occurs later.

5. Knowing failure by a medical examiner to refer a suspicious death of a child under the age of eighteen years, who is eligible to receive a certificate of live birth, to a child fatality review panel or to a certified child death pathologist is a class A misdemeanor.

(L. 1991 H.B. 185, A.L. 1994 S.B. 595)

CHAPTER 160, RSMo
SCHOOLS-GENERAL PROVISIONS

160.261. Discipline, written policy established by local boards of education—contents—reporting requirements—additional restrictions for certain suspensions–weapons offense, mandatory suspension or expulsion—no civil liability for authorized personnel—spanking not child abuse, when—investigation procedure—officials falsifying reports, penalty.

1. The local board of education of each school district shall clearly establish a written policy of discipline, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied. A written copy of the district's discipline policy and corporal punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. The policy shall require school administrators to report acts of school violence to teachers and other school district employees with a need to know. For the purposes of this chapter or chapter 167, RSMo, "need to know" is defined as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties. As used in this section, the phrase "act of school violence" or "violent behavior" means the exertion of physical force by a student with the intent to do serious physical injury as defined in subdivision (6) of section 565.002, RSMo, to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. The policy shall at a minimum require school administrators to report, as soon

as reasonably practical, to the appropriate law enforcement agency any of the following felonies, or any act which if committed by an adult would be one of the following felonies:

(1) First degree murder under section 565.020, RSMo;

(2) Second degree murder under section 565.021, RSMo;

(3) Kidnapping under section 565.110, RSMo;

(4) First degree assault under section 565.050, RSMo;

(5) Forcible rape under section 566.030, RSMo;

(6) Forcible sodomy under section 566.060, RSMo;

(7) Burglary in the first degree under section 569.160, RSMo;

(8) Burglary in the second degree under section 569.170, RSMo;

(9) Robbery in the first degree under section 569.020, RSMo;

(10) Distribution of drugs under section 195.211, RSMo;

(11) Distribution of drugs to a minor under section 195.212, RSMo;

(12) Arson in the first degree under section 569.040, RSMo;

(13) Voluntary manslaughter under section 565.023, RSMo;

(14) Involuntary manslaughter under section 565.024, RSMo;

(15) Second degree assault under section 565.060, RSMo;

(16) Sexual assault under section 566.040, RSMo;

(17) Felonious restraint under section 565.120, RSMo;

(18) Property damage in the first degree under section 569.100, RSMo; or

(19) The possession of a weapon under chapter 571, RSMo;

(20) Child Molestation in the first degree pursuant to section 566.067, RSMo;

(21) Deviate sexual assault pursuant to section 566.070, RSMo;

(22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; or

(23) Sexual abuse pursuant to section 566.100. RSMo;

committed on school property, including but not limited to actions on any school bus in service on behalf of the district or while involved in school activities. The policy shall require that any portion of a student's individualized education program that is related to demonstrated or potentially violent behavior shall be provided to any teacher and other school district employees who are directly responsible for the student's education or who otherwise interact with the student on an educational basis while acting within the scope of their assigned duties. The policy shall also contain the consequences of failure to obey standards of conduct set by the local board of education, and the importance of the standards to the maintenance of an atmosphere where orderly learning is possible and encouraged.

3. The policy shall provide that any student who is on suspension for any of the offenses listed in subsection 2 of this section or any act of violence or drug-related activity defined by school district policy as a serious violation of school pursuant to subsection 9 of this section shall have as a condition of his or her suspension the requirement that such student is not allowed, while on such suspension, to be within one thousand feet of any public school in the school district where such student attended school unless:

(1) Such student is under the direct supervision of the student's parent, legal guardian, or custodian;

(2) Such student is under the direct supervision of another adult designated by the student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school which suspended the student;

(3) Such student is in an alternative school that is located within one thousand feet of a public school in the school district where such student attended school; or

(4) Such student resides within one thousand feet of any public school in the school district where such student attended school in which case such student may be on the property of his or her residence without direct adult supervision.

4. Any student who violates the condition of suspension required pursuant to subsection 3 of this seciton may be subject to expulsion or further suspension pursuant to th eprovisions of sections 167.161, 167.164, and 167.171, RSMo. In making this determination consideration shall be given to whether the student poses a threat to the safety of any child or school employee and whether such student's unsupervised presence within one thousand feet of the school is disruptive to the educational process or undermines the effectiveness of the school's disciplinary policy. Removal of any pupil who is a student with a disability is subject to stae and federal procedural rights.

5. The policy shall provide for a suspension for a period of not less than one year, or expulsion, for a student who is determined to have brought a weapon to school, including but not limited to the school playground or the school parking lot, brought a weaon on a school bus or brought a weapon to a school activity whether on or off of the school property in violation of district policy, except that:

(1) The superintendent, or in a school district with no high school, the principal of the school which such child attends may modify such suspension on a case-by-case basis; and

(2) This section shall not prevent the school district from providing educational services in an alternative setting to a student suspended under the provisions of this section.

6. For the purpose of this section, the term "weapon" shall mean a "firearm" as defined under 18 U.S.C. 921 and the following items, as defined in section 571.010, RSMo: a blackjack, a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife, knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade knife; except that this section shall not be construed to prohibit a school board from adopting a policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for educational purposes so long as the firearm is unloaded. The local board of education shall define "weapon" in the discipline policy. Such definition shall include the weapons defined in this subsection but may also include other weapons.

7. All school district personnel responsible for the care and supervision of students are authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any property of the school, on any school bus going to or returning

from school, during school-sponsored activities, or during intermission or recess periods.

8. Teachers and other authorized district personnel in public schools responsible for the care, supervision, and discipline of school children, including volunteers selected with reasonable care by the school district, shall not be civilly liable when acting in conformity with the established policy of discipline developed by each board under this section, or when reporting to his or her supervisor or other person as mandated by state law, acts of school violence or threatened acts of school violence, within the course and scope of the duties of the teacher, authorized district personnel or volunteer, when such individual is acting in conformity with the established policies developed by the board. Nothing in this section shall be construed to create a new cause of action against such school district, or to relieve the school district from liability for the negligent acts of such persons.

9. Each school board shall define in its discipline policy acts of violence and any other acts that constitute a serious violation of that policy. Acts of violence as defined by school boards shall include but not be limited to exertion of physical force by a student with the intent to do serious bodily harm to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. School districts shall for each student enrolled in the school district, compile and maintain records of any serious violation of the district's discipline policy. Such records shall be made available to teachers and other school district employees with a need to know while acting within the scope of their assigned duties, and shall be provided as required in section 167.020, RSMo, to any school district in which the student subsequently attempts to enroll.

10. Spanking, when administered by certificated personnel of a school district in a reasonable manner in accordance with the local board of education's written policy of discipline, is not abuse within the meaning of chapter 210, RSMo. The provisions of sections 210.110 to 210.165, RSMo, notwithstanding, the division of family services shall not have jurisdiction over or investigate any report of alleged child abuse arising out of or related to any spanking administered in a reasonable manner by any certificated school personnel pursuant to a written policy of discipline established by the board of education of the school district. Upon receipt of any reports of child abuse by the division of family services pursuant to sections 210.110 to 210.165, RSMo, which allegedly involves personnel of a school district, the division of family services shall notify the superintendent of schools of the district or, if the person named in the alleged incident is the superintendent of schools, the president of the school board of the school district where the alleged incident occurred. If, after an initial investigation, the superintendent of schools or the president of the school board finds that the report involves an alleged incident of child abuse other than the administration of a spanking by certificated school personnel pursuant to a written policy of discipline or a report made for the

sole purpose of harassing a public school employee, the superintendent of schools or the president of the school board shall immediately refer the matter back to the division of family services and take no further action. In all matters referred back to the division of family services, the division of family services shall treat the report in the same manner as other reports of alleged child abuse received by the division. If the report pertains to an alleged incident which arose out of or is related to a spanking administered by certificated personnel of a school district pursuant to a written policy of discipline or a report made for the sole purpose of harassing a public school employee, a notification of the reported child abuse shall be sent by the superintendent of schools or the president of the school board to the juvenile officer of the county in which the alleged incident occurred. The report shall be jointly investigated by the juvenile officer or a law enforcement officer designated by the juvenile officer and the superintendent of schools or, if the subject of the report is the superintendent of schools, by the juvenile officer or a law enforcement officer designated by the juvenile officer and the president of the school board or such president's designee. The investigation shall begin no later than forty-eight hours after notification from the division of family services is received, and shall consist of, but need not be limited to, interviewing and recording statements of the child and the child's parents or guardian within two working days after the start of the investigation, of the school district personnel allegedly involved in the report, and of any witnesses to the alleged incident. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel shall issue separate reports of their findings and recommendations after the conclusion of the investigation to the school board of the school district within seven days after receiving notice from the division of family services. The reports shall contain a statement of conclusion as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The school board shall consider the separate reports and shall issue its findings and conclusions and the action to be taken, if any, within seven days after receiving the last of the two reports. The findings and conclusions shall be made in substantially the following form:

(1) The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school board personnel agree that the evidence shows that no abuse occurred;

(2) The report of the alleged child abuse is substantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel agree that the evidence is sufficient to support a finding that the alleged incident of child abuse did occur;

(3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school personnel are unable to agree on their findings and conclusions on the alleged incident.

11. The findings and conclusions of the school board shall be sent to the division of family services. If the findings and conclusions of the school board are that the report of the alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and no record shall be entered in the division of family services central registry. If the findings and conclusions of the school board are that the report of the alleged child abuse is substantiated, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school district and shall include the information in the division's central registry. If the findings and conclusions of the school board are that the issue involved in the alleged incident of child abuse is unresolved, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school board, however, the incident and the names of the parties allegedly involved shall not be entered into the central registry of the division of family services unless and until the alleged child abuse is substantiated by a court of competent jurisdiction.

12. Any superintendent of schools, president of a school board or such person's designee, or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or who knowingly withholds any information relative to any investigation or report pursuant to this section is guilty of a class A misdemeanor.

13. In order to ensure the safety of all students, should a student be expelled for bringing a seapon to school, violent behavior, or for an act of school violence, that student shall not, for the pruposes of the accreditation process of the Missouri School Improvement plan, be considered a dropout or be included in teh calculation of that district's educational persistense ratio.

(L. 1985 H.B. 463 § 5, A.L. 1987 H.B. 302, A.L. 1995 H.B. 345, A.L. 1996 H.B. 1301 & 1298, A.L. 2000 S.B. 944, A.L. 2001 S.B. 89 & 37)

CHAPTER 191, RSMo
HEALTH AND WELFARE

PREGNANCY-PRENATAL AND POSTNATAL CARE AND EDUCATION FOR WOMEN AND CHILDREN (ALCOHOL-CIGARETTES-DRUGS)

191.725. Physician to counsel pregnant patients on effects of cigarettes, alcohol and controlled substances—certifying form to be signed by patient on counseling—educational materials to be furnished to physicians.–Beginning January 1,

1992, every licensed physician who provides obstetrical or gynecological care to a pregnant woman shall counsel all patients as to the perinatal effects of smoking cigarettes, the use of alcohol and the use of any controlled substance as defined in section 195.017, RSMo, schedule I, II, or III for nonmedical purposes. Such physicians shall further have all patients sign a written statement, the form of which will be prepared by the director of the department of health and senior services, certifying that such counseling has been received. All such executed statements shall be maintained as part of that patient's medical file. The director of the department of health and senior services, in cooperation with the department of mental health, division of alcohol and drug abuse, shall further provide educational materials and guidance to such physicians for the purpose of assuring accurate and appropriate patient education.

(L. 1991 S.B. 190 § 1)

Effective 7-1-92

191.727. Educational program to be established for physicians—departments of health and senior services and mental health, duties.–The director of the department of health and senior services and the director of the department of mental health shall create and administer an educational program that shall:

(1) Provide education to all physicians providing obstetrical and gynecological care in taking accurate and complete drug histories from their pregnant patients;

(2) Provide education to all such physicians concerning the effects of cigarettes, alcohol and schedules I, II and III controlled substances on pregnancy and fetal outcome;

(3) Provide education to all such physicians concerning counseling techniques for drug abusing women so as to improve referral to and compliance with drug treatment programs.

(L. 1991 S.B. 190 § 2)

Effective 7-1-92

191.729. School districts to be furnished information on prenatal and postnatal effects of substances, when.–Upon receipt of federal funds for such program, the commissioner of the department of elementary and secondary education shall develop and make available to all school districts for inclusion in their drug and alcohol education programs in grades one through twelve, age-appropriate drug education curricula concerning the physiological effects and problems before and after birth caused by the use of cigarettes, alcohol and schedules I, II and III controlled substances as listed in section 195.017, RSMo.

(L. 1991 S.B. 190 § 3)

191.731. Pregnant woman referred for substance abuse to have priority for treatment—confidentiality of records.–A

pregnant woman referred for substance abuse treatment shall be a first-priority user of available treatment. All records and reports regarding such pregnant woman shall be kept confidential. The division of alcohol and drug abuse shall ensure that family-oriented substance abuse treatment be available, as appropriations allow. Substance abuse treatment facilities which receive public funds shall not refuse to treat women solely because they are pregnant.

(L. 1991 S.B. 190 § 4)

Effective 7-1-92

191.733. Hotline information on substance abuse treatment for pregnant women to be established.–The department of health and senior services shall establish and maintain a toll-free information line for the purpose of providing information on resources for substance abuse treatment and for assisting with referral for substance abusing pregnant women.

(L. 1991 S.B. 190 § 5)

Effective 7-1-92

191.735. Multidisciplinary teams to be established, duties—qualifications, expenses—team training content.

1. The directors of the department of health and senior services, mental health and social services and the commissioner of the department of elementary and secondary education shall establish multidisciplinary teams in areas deemed appropriate. Such teams shall act in an advisory capacity for local physicians or health care providers and shall include as a minimum a public health nurse, a representative of a hospital staff, an experienced child protection supervisor from the division of family services, an obstetrician, a neonatologist, pediatrician or a family practice physician with an interest in perinatal medicine, a medical social worker, a child psychologist and a drug treatment provider. No compensation shall be paid to the members of the multidisciplinary teams. These teams shall report to the director of the department of health and senior services. Necessary expenses of the teams may be paid from appropriations of the department of health and senior services upon approval by the director.

2. The director, in conjunction with the department of mental health, the department of elementary and secondary education, and the department of social services, shall ensure that these teams are trained in health issues affecting pregnant mothers and their babies, care in the home for medically complex infants, developmental impairments of exposed infants and treatment resources for drug-abusing families. The teams should also receive training in child protection aspects of intervention in child abuse and neglect cases and the various types of alternative resources available.

3. The local multidisciplinary teams shall ensure local cooperation in the implementation of sections 191.725 to 191.735.

(L. 1991 S.B. 190 § 6)

Effective 7-1-92

191.737. Children exposed to substance abuse, referral by physician to department of health and senior services—services to be initiated within seventy-two hours—physician making referral immune from civil liability—confidentiality of report.

1. Notwithstanding the physician-patient privilege, any physician or health care provider may refer to the department of health and senior services families in which children may have been exposed to a controlled substance listed in section 195.017, RSMo, schedules I, II and III, or alcohol as evidenced by:

(1) Medical documentation of signs and symptoms consistent with controlled substances or alcohol exposure in the child at birth; or

(2) Results of a confirmed toxicology test for controlled substances performed at birth on the mother or the child; and

(3) A written assessment made or approved by a physician, health care provider, or by the division of family services which documents the child as being at risk of abuse or neglect.

2. Nothing in this section shall preclude a physician or other mandated reporter from reporting abuse or neglect of a child as required pursuant to the provisions of section 210.115, RSMo.

3. Upon notification pursuant to subsection 1 of this section, the department of health and senior services shall offer service coordination services to the family. The department of health and senior services shall coordinate social services, health care, mental health services, and needed education and rehabilitation services. Service coordination services shall be initiated within seventy-two hours of notification. The department of health and senior services shall notify the department of social services and the department of mental health within seventy-two hours of initial notification.

4. Any physician or health care provider complying with the provisions of this section, in good faith, shall have immunity from any civil liability that might otherwise result by reason of such actions.

5. Referral and associated documentation provided for in this section shall be confidential and shall not be used in any criminal prosecution.

(L. 1991 S.B. 190 § 7)

Effective 7-1-92

191.739. Protective and preventive services to be provided by department of social services, duties.

1. The department of social services shall provide protective services for children that meet the criteria established in section 191.737. In addition the department of social services may provide preventive services for children that meet the criteria established in section 191.737.

2. No department shall cease providing services for any child exposed to substances as set forth in section 191.737 wherein a physician or health care provider has made or approved a written assessment which documents the child as being at risk of abuse

or neglect until such physician or health care provider, or his designee, authorizes such file to be closed.

(L. 1991 S.B. 190 § 8)

Effective 7-1-92

191.741. High risk pregnancy to be identified by protocol established by the department of health and senior services—services to be offered.

1. The department of health and senior services shall promulgate protocols based on a risk assessment profile based on substance abuse, to be used by physicians or health care providers to identify high risk pregnancies.

2. Upon notification by a physician or health care provider that a pregnant woman has been identified as having a high risk pregnancy based on such protocols, the department of health and senior services shall offer service coordination services to such woman. Service coordination services shall include a coordination of social services, health care and mental health services.

(L. 1991 S.B. 190 § 9)

Effective 7-1-92

191.743. High risk pregnancies, women to be informed of available services—consent to inform department of health and senior services, forms—confidentiality—physicians not to be liable.

1. Any physician or health care provider who provides services to pregnant women shall identify all such women who are high risk pregnancies by use of protocols developed by the department of health and senior services pursuant to section 191.741. The physician or health care provider shall upon identification inform such woman of the availability of services and the option of referral to the department of health and senior services.

2. Upon consent by the woman identified as having a high risk pregnancy, the physician or health care provider shall make a report, within seventy-two hours, to the department of health and senior servicecs on forms approved by the department of health and senior services.

3. Any physician or health care provider complying with the provisions of this section, in good faith, shall have immunity from any civil liability that might otherwise result by reason of such actions.

4. Referral and associated documentation provided for in this section shall be confidential and shall not be used in any criminal prosecution.

5. The consent required by subsection 2 of this section shall be deemed a waiver of the physician-patient privilege solely for the purpose of making the report pursuant to subsection 2 of this section.

(L. 1991 S.B. 190 § 10)

Effective 7-1-92

191.745. Tests to be made on women and infants at time of delivery—samples to be sent without identification to

laboratory—prenatal tests may be made, when.–Beginning July 1, 1992, the director of the department of health and senior services shall conduct periodic and scientifically appropriate prevalence tests on a statistically significant sample of women or infants at the time of delivery. Upon request from the department of health and senior services, physicians who provide obstetrical or gynecological care shall obtain from their patients at time of delivery, test samples and forward the same to a central laboratory designated by the director of the department of health and senior services. These samples shall be forwarded to such laboratory without any identifying information as to the donor. The director may, however, require demographic information necessary to interpret results. The director of the department of health and senior services shall then conduct such studies, through this and other means, as he deems appropriate to determine the extent of use and harmful perinatal effects of cigarettes, alcohol and schedules I, II and III controlled substances as defined in section 195.017, RSMo. Periodic screening results shall be compared to those of the preceding series of tests to determine trends in pregnancy substance abuse and to assist in monitoring the effectiveness of sections 191.725 to 191.735. Prevalence testing during the prenatal period may be conducted in the same manner at the discretion of the director of the department of health and senior services.

(L. 1991 S.B. 190 § 11)

Effective 7-1-92

CHAPTER 194, RSMo
DEATH-DISPOSITION OF DEAD BODIES

SUDDEN INFANT DEATH

194.117. Sudden infant death—notification—autopsy by certified child death pathologist required, procedure, release to parents or guardian—cost, how paid—department of health and senior services, duties—rules and regulations.–Any person who discovers the dead body of, or acquires the first knowledge of the death of, any child under the age of one year and over the age of one week, where the child died suddenly when in apparent good health, shall immediately notify the county coroner or medical examiner of the known facts concerning the time, place, manner, and circumstances of the death. All such deaths shall be autopsied by a certified child death pathologist. The coroner or medical examiner shall notify the parent or guardian of the child that an autopsy shall be performed at the expense of the state. The department of health and senior services shall receive prompt notification of such autopsy results. The results from the autopsy shall be reduced to writing and delivered to the state department of health and senior services. The term "sudden infant death

syndrome" shall be entered on the death certificate as the principal cause of death where the term is appropriately descriptive of the circumstances surrounding the death of the child. The cost of the autopsy and transportation of the body shall be paid by the department of health and senior services, and the department shall pay, out of appropriations made for that purpose, as a reimbursement to the certified child death pathologist such costs that are within the limitation of maximum rates established by the rules and regulations of the department. Autopsies under this section shall be performed by pathologists deemed qualified to perform autopsies by the department of health and senior services and who agree to perform the autopsy according to protocols developed pursuant to section 210.196, RSMo. The certified child death pathologist shall ensure that a tangible summary of the autopsy results is provided to the parents or guardian of the child and shall provide informational material on the subject of sudden infant death syndrome to the family within one week after the autopsy is performed. A form letter developed by the department of health and senior services shall include a statement informing the parents or guardian of the right to receive the full autopsy results in cases of suspected sudden infant death syndrome. The certified child death pathologist shall, upon request by the parents or guardian, release the full autopsy results to the parents, guardian or family physician in cases of suspected sudden infant death syndrome within thirty days of such request. The tangible summary and full autopsy report shall be provided at no cost to the parents or guardian. The director of the department of health and senior services shall prescribe reasonable rules and regulations necessary to carry out the provisions of this section, including the establishment of a cost schedule and standards for reimbursement of costs of autopsies performed pursuant to the provisions of this section. The provisions of this section shall not be construed so as to limit, restrict or otherwise affect any power, authority, duty or responsibility imposed by any other provision of law upon any coroner or medical examiner. The department of health and senior services may receive grants of money or other aid from federal and other public and private agencies or individuals for the administration or funding of this section or any portion thereof or for research to determine the cause and prevention of deaths caused by sudden infant death syndrome.

(L. 1978 S.B. 765 § 1, A.L. 1991 H.B. 185, A.L. 1993 S.B. 253 and S.B. 394, A.L. 1999 S.B. 25)

CHAPTER 352
RELIGIOUS AND CHARITABLE ASSOCIATIONS—CHARITABLE GIFT ANNUITIES

MINISTERS

352.400. Ministers, duty to report child abuse and neglect — definitions—designation of an agent.

1. As used in this section, the following words and phrases shall mean:

(1) **"Abuse"**, any physical injury, sexual abuse, or emotional abuse, injury or harm to a child under circumstances required to be reported pursuant to sections 210.109 to 210.183, RSMo;

(2) **"Child"**, any person regardless of physical or mental condition, under eighteen years of age;

(3) **"Minister"**, any person while practicing as a minister of the gospel, clergyperson, priest, rabbi, Christian Science practitioner, or other person serving in a similar capacity for any religious organization who is responsible for or who has supervisory authority over one who is responsible for the care, custody, and control of a child or has access to a child;

(4) **"Neglect"**, failure to provide the proper or necessary support or services by those responsible for the care, custody, and control of a child, under circumstances required to be reported pursuant to sections 210.109 to 210.183, RSMo;

(5) **"Religious organization"**, any society, sect, persuasion, mission, church, parish, congregation, temple, convention or association of any of the foregoing, diocese or presbytery, or other organization, whether or not incorporated, that meets at more or less regular intervals for worship of a supreme being or higher power, or for mutual support or edification in piety or with respect to the idea that a minimum standard of behavior from the standpoint of overall morality is to be observed, or for the sharing of common religious bonds and convictions;

(6) **"Report"**, the communication of an allegation of abuse or neglect pursuant to sections 210.109 to 210.183, RSMo.

2. When a minister or agent designated pursuant to subsection 3 of this section has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect under circumstances required to be* reported pursuant to sections 210.109 to 210.183, RSMo, the minister or designated agent shall immediately report or cause a report to be made as provided in sections 210.109 to 210.183, RSMo. Notwithstanding any other provision of this section or sections 210.109 to 210.183, RSMo, a minister shall not be required to report concerning a privileged communication made to him or her in his or her professional capacity.

3. A religious organization may designate an agent or agents required to report pursuant to sections 210.109 to 210.183, RSMo, in

an official capacity on behalf of the religious organization. In the event a minister, official or staff member of a religious organization has probable cause to believe that the child has been subjected to abuse or neglect under circumstances required to be reported pursuant to sections 210.109 to 213.183, RSMo, and the minister, official or staff member of the religious organization does not personally make a report pursuant to sections 210.109 to 210.183, RSMo, the designated agent of the religious organization shall be notified. The designated agent shall then become responsible for making or causing the report to be made pursuant to sections 210.109 to 210.183, RSMo. This section shall not preclude any person from reporting abuse or neglect as otherwise provided by law.

(L. 2002 S.B. 923, et al.) *Word "being" appears in original rolls.

CROSS REFERENCE

Child abuse, ministers duty to report, RSMo 210.115

CHAPTER 660, RSMo
DEPARTMENT OF SOCIAL SERVICES

CHILD SEXUAL ABUSE CASES
TRAINING-INVESTIGATION-TREATMENT

660.520. State technical assistance team for child sexual abuse cases, duties—counties may develop team, members—availability of records.

1. There is hereby established in the department of social services a special team, to be known as the "state technical assistance team", to assist in cases of child abuse, child neglect, child sexual abuse, child exploitation, child pornography, or child fatality. It shall be the priority of the team to focus on those cases in which more than one report has been received. The team shall:

(1) Provide assistance, expertise, and training to child protection agencies and multidisciplinary teams for the investigation and prosecution of child abuse, child neglect, child sexual abuse, child exploitation, child pornography, or child fatality cases;

(2) Assist in the investigation of child abuse, child neglect, child sexual abuse, child exploitation, child pornography, or child fatality cases, upon the request of local, county, state, or federal law enforcement agency, county, state, or federal prosecutor, a representative of the family courts, medical examiner, coroner, juvenile officer, or department of social services staff. Upon being requested to assist in an investigation, the state technical assistance team shall notify appropriate parties specified in this subdivison of the teams involvement. State technical assistance team investigators licensed as peace officers by the director of the

department of public safety pursuant to Chapter 590, RSMo, shall be deemed to be peace officers within the state of Missouri while acting in an investigation or on behalf of a child. The power of arrest of a state technical assistance team investigator acting as a peace officer shall be limited to offenses involving child abuse, child neglect, child sexual abuse, child exploitation, child pornography, child facility, or in situations of imminent danger to the investigator or another person;

(3) Assist county multidisciplinary teams to develop and implement protocols for the investigation and prosecution of child abuse, child neglect, child sexual abuse, child exploitation, child pornography, or child fatality cases.

2. The team may call upon the expertise of the office of the attorney general, the Missouri office of prosecution services, the state highway patrol, the department of health and senior services, the department of mental health or any other agency or institution.

3. Each county may develop a multidisciplinary team for the purpose of determining the appropriate investigative and therapeutic action to be initiated on complaints referenced in subsection 1 of this section reported to the children's division. The multidisciplinary team may include, but is not limited to, a prosecutor, or his or her representative, an investigator from the children's division, a physician, a representative from a mental health care services agency and a representative of the police agency of primary jurisdiction.

4. All reports and records made and maintained by the state technical assistance team or local law enforcement relating to criminal investigations conducted pursuant to this section, including arrests, shall be available in the same manner as law enforcement records, as set forth in sections 610.100 to 610.200, RSMo, and to the individuals identified in subdivision (13) of subsection 2 of section 210.150, RSMo. All other records shall be available in the same manner as provided for in section 210.150, RSMo.

(L. 1990 H.B. 1370, et al. § 1, A.L. 2000 S.B. 757 & 602, A.L. 2004 H.B. 1055)

660.523. Uniform rules for investigation of child sexual abuse cases—training provided for division of family services, staff.

1. By January 1, 1991, using approved state child abuse and neglect federal grant funds, the department of social services shall develop uniform protocols for investigations of child sexual abuse cases pursuant to chapter 210, RSMo, and shall provide training to division of family services employees who investigate reports of such cases.

2. The department of social services shall develop separate protocols for multiple-suspect and multiple-victim cases.

(L. 1990 H.B. 1370, et al. § 2)

660.525. Treatment for child sexual abuse victims provided by family services, when.–The division of family services may provide treatment services for child sexual abuse victims in instances where the perpetrator is not listed in section 210.110, RSMo, as a person responsible for the care, custody and control of the child, if treatment funds are available and such treatment services are requested by the family of the child.

(L. 1990 H.B. 1370, et al. § 4)

660.526. Child sexual abuse cases, annual training required by division of family services.–The division of family services shall ensure that all employees and persons with contracts with the division and who specialize in either the treatment, prosecution, or investigation of child sexual abuse cases receive a minimum of fifteen hours of annual training. Such training shall be in the investigation, prosecution, treatment, nature, extent and causes of sexual abuse.

(L. 1994 S.B. 595)

CHAPTER 514, RSMo
COSTS-CIVIL CASES

514.335. Guardian ad litem appointed for minors not party to action, compensation.–In any court case or proceeding in which a guardian ad litem is appointed by the court to safeguard the interests of a minor and in which the minor is not a party, the court may enter judgment in favor of the guardian ad litem allowing reasonable compensation for such guardian ad litem's services.

(L. 1982 S.B. 722 § 1, A.L. 1996 S.B. 869)

Effective 7-1-97

CHAPTER 516, RSMo
STATUTE OF LIMITATIONS

516.371. Limitation on action for sexual contact by certain persons.–Notwithstanding any provision of law to the contrary, there shall be a ten-year statute of limitation on any action for damages for personal injury caused to an individual by a person within the third degree of affinity or consanguinity who subjects such individual to sexual contact, as defined in section 566.010, RSMo.

(L. 1989 S.B. 420 § 1)

CROSS REFERENCES

Childhood sexual abuse damage action, time limitation on bringing action after August 28, 1990, RSMo **537.046** Prosecution for sexual offenses involving person seventeen or under to be commenced within ten years of offense, RSMo **556.037**.

CHAPTER 537, RSMo
TORTS AND ACTIONS FOR DAMAGES

537.046. Childhood sexual abuse, injury or illness defined—action for damages may be brought, when.

1. As used in this section, the following terms mean:

(1) **"Childhood sexual abuse"**, any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030, 566.040, 566.050, 566.060, 566.070, 566.080, 566.090, 566.100, 566.110, or 566.120, RSMo, or section 568.020, RSMo;

(2) **"Injury"** or **"illness"**, either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

2. Any action to recover damages from injury or illness caused by childhood sexual abuse in an action brought pursuant to this section shall be commenced within ten years of the plaintiff attaining the age of twenty-one or within three years of the date of the plaintiff discovers or reasonably should have discovered, that the injury or illness was caused by childhood sexual abuse, whichever later occurs.

3. This section shall apply to any action commenced on or after the effective date of this section, including any action which would have been barred by the application of the statute of limitation applicable prior to that date.

(L. 1990 H.B. 1370, et al. § 3, A.L. 2004 H.B. 1453)

CROSS REFERENCES

Prosecution for sexual offense involving person seventeen or under to be commenced within ten years of offense, RSMo 556.037 Statute of limitation in action for damages for sexual contact with person within third degree of consanguinity or affinity, RSMo 516.371

(1993) Expiration of statutes of limitation for tort actions created vested right in favor of defendants to be free from suit; therefore, to extent that section authorizes causes of action that would have

been barred under statutes of limitation in effect prior to effective date of statute, statute contravenes, Art. I, Sec. 13, Mo. Const., constitutional prohibition against retrospective laws. Doe v. Roman Catholic Diocese, 862 S.W.2d 338 (Mo. en banc).

537.600. Sovereign immunity in effect—exceptions—waiver of.

1. Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:

(1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment;

(2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition. In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a highway or road, which was designed and constructed prior to September 12, 1977, the public entity shall be entitled to a defense which shall be a complete bar to recovery whenever the public entity can prove by a preponderance of the evidence that the alleged negligent, defective, or dangerous design reasonably complied with highway and road design standards generally accepted at the time the road or highway was designed and constructed.

2. The express waiver of sovereign immunity in the instances specified in subdivisions (1) and (2) of subsection 1 of this section are absolute waivers of sovereign immunity in all cases within such situations whether or not the public entity was functioning in a governmental or proprietary capacity and whether or not the public entity is covered by a liability insurance for tort.

3. The term "public entity" as used in this section shall include any multi-state compact agency created by a compact formed between this state and any other state which has been approved by the Congress of the United States. Sovereign immunity, if any, is waived for the proprietary functions of such multi-state compact

agencies as of the date that the Congress of the United States approved any such multi-state compact.

4. Pursuant to the prerogative of the general assembly to declare the public policy of the state in matters concerning liability in tort for public entities, the general assembly declares that prior to September 12, 1977, there was no sovereign or governmental immunity for the proprietary functions of multi-state compact agencies operating pursuant to the provisions of sections 70.370 to 70.440, RSMo, and 238.030 to 238.110, RSMo, including functions such as the operation of motor vehicles and the maintenance of property, involved in the operation of a public transit or public transportation system, and that policy is hereby reaffirmed and declared to remain in effect.

5. Any court decision dated subsequent to August 13, 1978, holding to the contrary of subsection 4 of this section erroneously interprets the law and the public policy of this state, and any claimant alleging tort liability under such circumstances for an occurrence within five years prior to February 17, 1988, shall in addition to the time allowed by the applicable statutes of limitation or limitation of appeal, have up to one year after July 14, 1989, to file or refile an action against such public entity and may recover damages imposed by the common law of this state as for any other person alleged to have caused similar damages under similar circumstances.

(L. 1978 H.B. 1650 § 1, A.L. 1985 S.B. 323, A.L. 1989 H.B. 161)

Effective 7-14-89

(1988) Law abrogating sovereign immunity is procedural as it creates no new cause of action but only provides remedy for cause of action whose remedy was previously barred and therefore applies retrospectively. Wilkes v. Mo. Highway and Transportation Commission, 762 S.W.2d 27 (Mo. En Banc 1988).

(1988) Broken down stop sign constituted dangerous condition of government property and sovereign immunity is waived. Donahue v. City of St. Louis, 758 S.W.2d 50 (Mo. En Banc 1988).

(1988) Placement of a folding partition against a ladder created a dangerous condition of property within meaning of section 537.600, RSMo. Alexander v. State, 756 S.W.2d 539 (Mo. En Banc 1988).

(1989) Public housing authorities are statutory municipal corporations and exercise only governmental functions which are subject to governmental immunity. Privately owned rental property enrolled in rental assistance program is not "public property" and was not within statutory exception to governmental immunity. (Mo.App.) Tyler v. Housing Auth. of Kansas City, 781 S.W.2d 110.

(1992) The sovereign immunity doctrine is uniquely applicable to governmental entities and is not transferable to an agent of that entity. The public duty doctrine holds that public officers are not

liable in tort for injuries or damages sustained by particular individuals that result from a breach of the duty that officers owe to the general public. Automobile accident victim's attempt to intermingle the two doctrines fails. The abrogation of sovereign immunity in no way implicitly abrogated the public duty doctrine. Beaver v. Gosney, 825 S.W.2d 870 (Mo. App.).

(1992) A medical center, a not for profit corporation, which is not controlled by or answerable to public officials, public entities, or public itself, is not a public entity protected by sovereign immunity. Stacy v. Truman Medical Center, 836 S.W.2d 911 (Mo. enbanc).

(1993) Court finds a direct conflict between the state doctrine of sovereign immunity and the federal Emergency Medical Treatment and Active Labor Act to extent public hospital claimed to be immune from "patient dumping" claim. Federal act preempted state sovereign immunity doctrine. Helton v. Phelps County Regional Medical Center, 817 F. Supp. 789 (E.D. Mo.).

(1993) Doctrine of sovereign immunity applies to regional planning commission. Where slander is not among the circumstances obligating insurer to pay on behalf of the regional planning under insurance policy, regional planning commission did not waive its sovereign immunity against plaintiff's claim. Balderre v. Beeman, 837 S.W.2d 309 (Mo. App. S.D.).

(1993) Where high speed chase by law enforcement officers resulted in one civilian death and substantial property damage and personal injury to others, statute that waives sovereign immunity for negligent acts or omissions of public employees in operation of motor vehicles in course of employment does not create duty running from individual defendants to either general public or to plaintiffs individually. Boyle v. City of Liberty, Mo., 833 F. Supp. 1436 (W.D. Mo.).

(1993) Plaintiff may have action against city because official immunity doctrine, which provides that public officers are not personally liable for negligent acts related to discretionary duties and performed within scope of their authority, is different legal concept than sovereign immunity doctrine which waives sovereign immunity for injuries resulting from negligent acts of public employees arising out of operation of motorized vehicles. Bachmann v. Welby, 860 S.W.2d 31 (Mo. App. E.D.).

(1993) Statute waives sovereign immunity in certain cases, however, statute does not authorize awarding of costs against state agency. In instances where general assembly waives immunity regarding costs, it explicitly specifies such waivers as it provides in sections 550.020, RSMo, and 536.087, RSMo. Richardson v. State Highway and Transportation Commission, 863 S.W.2d 876 (Mo. en banc).

(1999) Doctrine of res ipsa loquitur cannot be used to establish the dangerous-condition exception of this section. Hale ex rel. Hale v. City of Jefferson, 6 S.W. 3d 187 (Mo.App.W.D.).

CHAPTER 556, RSMo
PRELIMINARY PROVISIONS CRIMINAL CODE

556.037. Time limitations for prosecutions for sexual offenses involving a person under eighteen.–The provisions of section 556.036, to the contrary notwithstanding, prosecutions for unlawful sexual offenses involving a person eighteen years of age or under must be commenced within ten years after the victim reaches the age of eighteen.

(L. 1987 H.B. 598 § 18, A.L. 1990 H.B. 1370, et al., A.L. 1997 H.B. 104)

CROSS REFERENCES

Childhood sexual abuse damage action, time limitation on bringing action after August 28, 1990, RSMo 537.046 Statute of limitation in action for damages for sexual contact with person within third degree of consanguinity or affinity, RSMo 516.371

CHAPTER 565, RSMo
OFFENSES AGAINST THE PERSON

565.020. First degree murder, penalty—person under sixteen years of age not to receive death penalty.

1. A person commits the crime of murder in the first degree if he knowingly causes the death of another person after deliberation upon the matter.

2. Murder in the first degree is a class A felony, and the punishment shall be either death or imprisonment for life without eligibility for probation or parole, or release except by act of the governor; except that, if a person has not reached his sixteenth birthday at the time of the commission of the crime, the punishment shall be imprisonment for life without eligibility for probation or parole, or release except by act of the governor.

(L. 1983 S.B. 276, A.L. 1984 S.B. 448 § A—effective 10-1-84, A.L. 1990 H.B. 974)

CROSS REFERENCE

Execution, location, duties of the warden, RSMo 546.730

565.021. Second degree murder, penalty.

1. A person commits the crime of murder in the second degree if he:

(1) Knowingly causes the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person; or

(2) Commits or attempts to commit any felony, and, in the perpetration or the attempted perpetration of such felony or in the flight from the perpetration or attempted perpetration of such felony, another person is killed as a result of the perpetration or attempted perpetration of such felony or immediate flight from the perpetration of such felony or attempted perpetration of such felony.

2. Murder in the second degree is a class A felony, and the punishment for second degree murder shall be in addition to the punishment for commission of a related felony or attempted felony, other than murder or manslaughter.

3. Notwithstanding section 556.046, RSMo, and section 565.025, in any charge of murder in the second degree, the jury shall be instructed on, or, in a jury-waived trial, the judge shall consider, any and all of the subdivisions in subsection 1 of this section which are supported by the evidence and requested by one of the parties or the court.

(L. 1983 S.B. 276, A.L. 1984 S.B. 448 § A)

Effective 10-1-84

*No continuity with § 565.021 as repealed by L. 1983 S.B. 276.

CROSS REFERENCE

No bail, certain defendants, certain offenses, RSMo 544.671

(1990) Reduction in sentence was available to defendant when statute which limited maximum term of imprisonment became effective before state brought charges but after crime was committed. (Mo.App.) Searcy v. State, 784 S.W.2d 911.

(1998) Defendant may be charged under the felony murder statute instead of involuntary manslaughter at the prosecutor's discretion when both apply. State v. Pembleton, 978 S.W.2d 352 (E.D.Mo.).

565.023. Voluntary manslaughter, penalty—under influence of sudden passion, defendant's burden to inject.

1. A person commits the crime of voluntary manslaughter if he:

(1) Causes the death of another person under circumstances that would constitute murder in the second degree under subdivision (1) of subsection 1 of section 565.021, except that he caused the death under the influence of sudden passion arising from adequate cause; or

(2) Knowingly assists another in the commission of self-murder.

2. The defendant shall have the burden of injecting the issue of

influence of sudden passion arising from adequate cause under subdivision (1) of subsection 1 of this section.

3. Voluntary manslaughter is a class B felony.

(L. 1983 S.B. 276, A.L. 1984 S.B. 448 § A—effective 10-1-84)
Effective 10-1-84

565.024. Involuntary manslaughter, penalty.

1. A person commits the crime of involuntary manslaughter in the first degree if he:(1) Recklessly causes the death of another person; or

(2) While in an intoxicated condition operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause the death of any person.

2. Involuntary manslaughter in the first degree is a class C felony.

3. A person commits the crime of involuntary manslaughter in the second degree if he acts with criminal negligence to cause the death of any person.

4. Involuntary manslaughter in the second degree is a class D felony.

(L. 1983 S.B. 276, A.L. 1984 S.B. 448 § A, A.L. 1986 H.B. 1596, A.L. 1999 S.B. 328, et al.)

(1992) Definition of "person" in section 1.205, RSMo, which includes unborn children is applicable to other statutes and court concludes that it applies at least to this section, the involuntary manslaughter statute. State v. Knapp, 843 S.W.2d 345 (Mo. enbanc).

(1998) Defendant may be charged under the felony murder statute instead of involuntary manslaughter at the prosecutor's discretion when both apply. State v. Pembleton, 978 S.W.2d 352 (E.D.Mo.).

565.050. Assault, first degree, penalty.

1. A person commits the crime of assault in the first degree if he attempts to kill or knowingly causes or attempts to cause serious physical injury to another person.

2. Assault in the first degree is a class B felony unless in the course thereof the actor inflicts serious physical injury on the victim in which case it is a class A felony.

(L. 1977 S.B. 60, A.L. 1983 S.B. 276, A.L. 1984 S.B. 448 § A)
Effective 10-1-84

CROSS REFERENCE

No bail, certain defendants, certain offenses, RSMo 544.671

565.149. Definitions.–As used in sections 565.149 to 565.169, the following words and phrases mean:

(1) **"Child"**, a person under seventeen years of age;

(2) **"Legal custody"**, the right to the care, custody and control of a child;

(3) **"Parent"**, either a biological parent or a parent by adoption;

(4) **"Person having a right of custody"**, a parent or legal guardian of the child.

(L. 1988 H.B. 1272, et al. § 1)

565.150. Interference with custody—penalty.

1. A person commits the crime of interference with custody if, knowing that he has no legal right to do so, he takes or entices from legal custody any person entrusted by order of a court to the custody of another person or institution.

2. Interference with custody is a class A misdemeanor unless the person taken or enticed away from legal custody is removed from this state, detained in another state or concealed, in which case it is a class D felony.

(L. 1977 S.B. 60, A.L. 1988 H.B. 1272, et al.)

(1984) "Takes...from lawful custody" is construed to include unlawful retention of any person following a period of temporary lawful custody. State v. Edmisten (Mo.App.), 674 S.W.2d 576.

565.153. Parental kidnapping—penalty.

1. In the absence of a court order determining rights of custody or visitation to a child, a person having a right of custody of the child commits the crime of parental kidnapping if he removes, takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody right of another person or a public agency also having a custody right to that child.

2. Parental kidnapping is a class D felony.

3. A subsequently obtained court order for custody or visitation shall not affect the application of this section.

(L. 1988 H.B. 1272, et al. § 2)

565.156. Child abduction—penalty.

1. A person commits the crime of child abduction if he or she:

(1) Intentionally takes, detains, entices, conceals or removes a child from a parent after being served with process in an action affecting marriage or paternity but prior to the issuance of a temporary or final order determining custody;

(2) At the expiration of visitation rights outside the state, intentionally fails or refuses to return or impedes the return of the child to the legal custodian in Missouri;

(3) Conceals, detains, or removes the child for payment or promise of payment at the instruction of a person who has no legal right to custody;

(4) Retains in this state for thirty days a child removed from another state without the consent of the legal custodian or in violation of a valid court order of custody; or

(5) Having legal custody of the child pursuant to a valid court order, removes, takes, detains, conceals or entices away that child within or without the state, without good cause, and with the intent to deprive the custody or visitation rights of another person, without obtaining written consent as is provided under section 452.377, RSMo.

2. Child abduction is a class D felony.

(L. 1988 H.B. 1272, et al. § 3)

565.160. Defenses to parental kidnapping and child abduction.–It shall be an absolute defense to the crimes of parental kidnapping and child abduction that:

(1) The person had custody of the child pursuant to a valid court order granting legal custody or visitation rights which existed at the time of the alleged violation, except that this defense is not available to persons charged with child abduction under subdivision (5) of subsection 1 of section 565.156;

(2) The person had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond his or her control, and the person notified or made a reasonable attempt to notify the other parent or legal custodian of the child of such circumstances within twenty-four hours after the visitation period had expired and returned the child as soon as possible; or

(3) The person was fleeing an incident or pattern of domestic violence.

(L. 1988 H.B. 1272, et al. § 4)

565.163. Venue.–Persons accused of committing the crime of interference with custody, parental kidnapping or child abduction shall be prosecuted by the prosecuting attorney or circuit attorney:

(1) In the county in which the child was taken or enticed away from legal custody;

(2) In any county in which the child who was taken or enticed away from legal custody was taken or held by the defendant;

(3) The county in which lawful custody of the child taken or enticed away was granted; or

(4) The county in which the defendant is found.

(L. 1988 H.B. 1272, et al. § 5)

565.165. Assisting in child abduction or parental kidnapping—penalty.

1. A person commits the crime of assisting in child abduction or parental kidnapping if he:

(1) Before or during the commission of a child abduction or parental kidnapping as defined in section 565.153 or 565.156 and with the intent to promote or facilitate such offense, intentionally assists another in the planning or commission of child abduction or parental kidnapping, unless before the commission of the offense he makes proper efforts to prevent the commission of the offense; or

(2) With the intent to prevent the apprehension of a person known to have committed the offense of child abduction or parental kidnapping, or with the intent to obstruct or prevent efforts to locate the child victim of a child abduction, knowingly destroys, alters, conceals or disguises physical evidence or furnishes false information.

2. Assisting in child abduction or parental kidnapping is a class A misdemeanor.

(L. 1988 H.B. 1272, et al. § 6)

565.167. Custody of child—peace officer to take child into protective custody, when.

1. A peace officer investigating a report of a violation of section 565.150, or section 565.153 or 565.156, may take the child into temporary protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the child.

2. If during the course of an investigation under section 565.150, or section 565.153 or 565.156, the child is found in the physical custody of the defendant or another, the law enforcement officer shall return the child to the parent or legal custodian from whom the child was concealed, detained or removed, unless there is good cause for the law enforcement officer to retain temporary protective custody of the child pursuant to section 210.125, RSMo.

(L. 1988 H.B. 1272, et al. § 7)

565.169. Restitution, expenses of custodial parent granted, when.–Upon conviction or guilty plea of a person under section 565.150, or section 565.153 or 565.156, the court may, in addition to or in lieu of any sentence or fine imposed, assess as restitution against the defendant and in favor of the legal custodian or parent any reasonable expenses incurred by the legal custodian or parent in searching for or returning the child.

(L. 1988 H.B. 1272, et al. § 8)

CHAPTER 566, RSMo
SEXUAL OFFENSES

566.010. Chapter 566 and chapter 568 definitions.–As used in chapters 566 and 568, RSMo:

(1) **"Deviate sexual intercourse"**, any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person;

(2) **"Sexual conduct"** means sexual intercourse, deviate sexual intercourse or sexual contact;

(3) **"Sexual contact"** means any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, for the purpose of arousing or gratifying sexual desire of any person;

(4) **"Sexual intercourse"** means any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.

(L. 1977 S.B. 60, A.L. 1987 H.B. 341, A.L. 1991 H.B. 566, A.L. 1994 S.B. 693, A.L. 2000 S.B.757 & 602)

Effective 1-1-95

566.020. Mistake as to incapacity or age.

1. Whenever in this chapter the criminality of conduct depends upon a victim's being incapacitated, no crime is committed if the actor reasonably believed that the victim was not incapacitated and reasonably believed that the victim consented to the act. The defendant shall have the burden of injecting the issue of belief as to capacity and consent.

2. Whenever in this chapter the criminality of conduct depends upon a child being thirteen years of age or younger, it is no defense that the defendant believed the child to be older.

3. Whenever in this chapter the criminality of conduct depends upon a child being under seventeen years of age, it is an affirmative defense that the defendant reasonably believed that the child was seventeen years of age or older.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693)

Effective 1-1-95

566.023. Marriage to victim, at time of offense, affirmative defense, for certain crimes.–It shall be an affirmative defense to prosecutions pursuant to sections 566.032, 566.034, 566.062, 566.064, 566.068, and 566.090 that the defendant was married to the victim at the time of the offense.

(L. 1994 S.B. 693, A.L. 1998 H.B. 1918)

566.025. Evidence that defendant has committed other charged and uncharged crimes of a sexual nature involving victims under fourteen admissible to prove propensity to commit crime, when.–In prosecutions pursuant to this chapter or chapter 568, RSMo, involving a victim under fourteen years of age, whether or not age is an element of the crime for which the defendant is on trial, evidence that the defendant has committed other charged or uncharged crimes of a sexual nature involving victims under fourteen years of age shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he or she is charged, unless the trial court finds that the probative value of such evidence is outweighed by the prejudicial effect.

(L. 1994 S.B. 693, A.L. 2000 S.B. 757 & 602)

Effective 1-1-95

(1998) Section was ruled unconstitutional because it violated Sections 17 and 18(a) of Article I of the Missouri Constitution by allowing uncharged conduct to be introduced for the purpose of showing a propensity to commit a crime. State v. Burns, 978 S.W.2d 759 (Mo.banc).

566.030. Forcible rape and attempted forcible rape, penalties.

1. A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1977 S.B. 60, A.L. 1980 H.B. 1138, et al., A.L. 1990 H.B. 1370, et al., A.L. 1993 S.B. 180, A.L. 1994 S.B. 693, A.L. 1998 H.B. 1779)

CROSS REFERENCES

Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046 No bail, certain defendants, certain offenses, RSMo 544.671 Prosecuting witness in rape case not to be interrogated as to prior sexual conduct, RSMo 491.015

(1989) Use of weapon not required to prove charge of felonious restraint. Threat of injury from weapon is sufficient to substantiate the charge. (Mo.App.) State v. Brigman, 784 S.W.2d 217.

(1992) Pursuant to section 1.030, RSMo, use of word "he" includes both male and female and because section encompasses the conduct of males and females, there is no violation of the equal protection clauses of the United States or Missouri Constitutions. State v. Stokely, 842 S.W.2d 77 (Mo. en banc).

(1997) Female can be held guilty of rape where she aids a male in committing the rape, even though she cannot commit a rape individually. Bass v. State, 950 S.W.2d 940 (Mo.App.W.D.).

566.032. Statutory rape, first degree, penalties.

1. A person commits the crime of statutory rape in the first degree if he has sexual intercourse with another person who is less than fourteen years old.

2. Statutory rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1994 S.B. 693)

Effective 1-1-95

566.034. Statutory rape, second degree, penalty.

1. A person commits the crime of statutory rape in the second degree if being twenty-one years of age or older, he has sexual intercourse with another person who is less than seventeen years of age.

2. Statutory rape in the second degree is a class C felony.

(L. 1994 S.B. 693)

Effective 1-1-95

566.040. Sexual assault, penalties.

1. A person commits the crime of sexual assault if he has sexual intercourse with another person knowing that he does so without that person's consent.

2. Sexual assault is a class C felony.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693)

Effective 1-1-95

CROSS REFERENCE

Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

566.060. Forcible sodomy, penalties.

1. A person commits the crime of forcible sodomy if such person has deviate sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1977 S.B. 60, A.L. 1980 H.B. 1138, et al., A.L. 1990 H.B. 1370, et al., A.L. 1994 S.B. 693, A.L. 1998 H.B. 1779)

CROSS REFERENCE

Child abuse definitions, actions for civil damages may be brought, when, RSMo 537.046

(1993) For purposes of definition of "forcible compulsion" in section 565.061, RSMo, age of victim, relationship to defendant and testimony of victim that defendant guided her head and mouth, or that defendant threatened to ground victim, was not sufficient evidence to establish that victim was in reasonable fear of death, serious physical injury or kidnapping as required by conviction for forcible sodomy under this section. State v. Daleske, 866 S.W.2d 476 (Mo. App. W.D.).

566.062. Statutory sodomy, first degree, penalties.

1. A person commits the crime of statutory sodomy in the first degree if he has deviate sexual intercourse with another person who is less than fourteen years old.

2. Statutory sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1994 S.B. 693)
Effective 1-1-95

566.064. Statutory sodomy, second degree, penalty.

1. A person commits the crime of statutory sodomy in the second degree if being twenty-one years of age or older, he has deviate sexual intercourse with another person who is less than seventeen years of age.

2. Statutory sodomy in the second degree is a class C felony.

(L. 1994 S.B. 693)

Effective 1-1-95

566.067. Child molestation, first degree, penalties.

1. A person commits the crime of child molestation in the first degree if he or she subjects another person who is less than fourteen years of age to sexual contact.

2. Child molestation in the first degree is a class B felony unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class A felony.

(L. 1994 S.B. 693, A.L. 2000 S.B. 757 & 602)

CROSS REFERENCE

Child, genital mutilation of a female child, crime, penalty, defenses, RSMo 568.065.

566.068. Child molestation, second degree, penalties.

1. A person commits the crime of child molestation in the second degree if he or she subjects another person who is less than seventeen years of age to sexual contact.

2. Child molestation in the second degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

(L. 1994 S.B. 693, A.L. 2000 S.B. 757 & 602)

CROSS REFERENCE

Child, genital mutilation of a female child, crime, penalty, defenses, RSMo 568.065.

566.070. Deviate sexual assault, penalty.

1. A person commits the crime of deviate sexual assault if he has deviate sexual intercourse with another person knowing that he does so without that person's consent.

2. Deviate sexual assault is a class C felony.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693)

Effective 1-1-95

CROSS REFERENCE

Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

566.083. Sexual misconduct involving a child, penalty.

1. A person commits the crime of sexual misconduct involving a child if the person:

(1) Knowingly exposes the person's genitals to a child less than fourteen years of age in a manner that would cause a reasonable adult to believe that the conduct is likely to cause affront or alarm to a child less than fourteen years of age;

(2) Knowingly exposes the person's genitals to a child less than fourteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; or

(3) Coerces a child less than fourteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.

2. As used in this section, the term "sexual act" means any of the following, whether performed or engaged in either with any other person or alone: sexual or anal intercourse, masturbation, bestiality, sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.

3. Violation of this section is a class D felony; except that the second or any subsequent violation of this section is a class C felony.

(L. 1997 S.B. 56)

566.090. Sexual misconduct, first degree, penalties.

1. A person commits the crime of sexual misconduct in the first degree if he has deviate sexual intercourse with another person of the same sex or he purposely subjects another person to sexual contact without that person’s consent.

2. Sexual misconduct in the first degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or unless in the course thereof the actor displays a deadly weapon in a threatening manner or the offense is committed as a part of a ritual or ceremony, in which case it is a class D felony.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693, A.L. 2002 S.B. 969, et al.)

Effective 1-1-95

CROSS REFERENCE

Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

(1986) This section does not violate the Fourteenth Amendment to the U.S. Constitution despite the facts that identical conduct which is legal if done by a person of one sex is illegal if done by a person of the other sex, and that such prohibited conduct is a highly intimate activity of private life. State v. Walsh, 713 S.W.2d 508 (Mo. banc 1986).

566.093. Sexual misconduct, second degree, penalties.

1. A person commits the crime of sexual misconduct in the second degree if he:

(1) Exposes his genitals under circumstances in which he knows that his conduct is likely to cause affront or alarm; or

(2) Has sexual contact in the presence of a third person or persons under circumstances in which he knows that such conduct is likely to cause affront or alarm.

2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has previously been convicted of an offense under this chapter, in which case it is a class A misdemeanor.

(L. 1994 S.B. 693)

Effective 1-1-95

566.095. Sexual misconduct, third degree, penalty.

1. A person commits the crime of sexual misconduct in the third degree if he solicits or requests another person to engage in sexual conduct under circumstances in which he knows that his requests or solicitation is likely to cause affront or alarm.

2. Sexual misconduct in the third degree is a class C misdemeanor.

(L. 1994 S.B. 693)

Effective 1-1-95

566.100. Sexual abuse, penalties.

1. A person commits the crime of sexual abuse if he subjects another person to sexual contact by the use of forcible compulsion.

2. Sexual abuse is a class C felony unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual contact with more than one person or the victim is less than fourteen years of age, in which case the crime is a class B felony.

(L. 1977 S.B. 60, A.L. 1990 H.B. 1370, et al., A.L. 1991 H.B. 566, A.L. 1994 S.B. 693)

Effective 1-1-95

CROSS REFERENCE

Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

(1981) Offenses of sexual abuse in the first, second, and third degree may be, but are not necessarily, lesser included offenses under sodomy statute and deviate sexual assault statutes. State v. Gibson (Mo.App.), 623 S.W.2d 93.

566.135. Defendant may be tested for various sexually transmitted diseases, when.

1. Pursuant to a motion filed by the prosecuting attorney or circuit attorney with notice given to the defense attorney and for good cause shown, in any criminal case in which a defendant has been charged by the prosecuting attorney's office or circuit attorney's office with any offense under this chapter or pursuant to section 575.150, 567.020, 565.050, 565.060, 565.070, 565.072, 565.073, 565.074, 565.075, 565.081, 565.082, 565.083, 568.045, 568.050, or 568.060, RSMo, or paragraph (a), (b), or (c), of subdivision (2) of subsection 1 of section 191.677, RSMo, the court may order that the defendant be conveyed to a state-, city-, or county-operated HIV clinic for testing for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia. The results of the defendant's HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia tests shall be released to the victim and his or her parent or legal guardian if the victim is a minor. The results of the defendant's HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia tests shall also be released to the prosecuting attorney or circuit attorney and the defendant's attorney. The state's motion to obtain said testing, the court's order of the same, and the test results shall be sealed in the court file.

2. As used in this section, "HIV" means the human immunodeficiency virus that causes acquired immunodeficiency syndrome.

(L. 2002 H.B. 1756)

566.140. Treatment and rehabilitation program for perpetrators of sexual offenses, when.–Any person who has pleaded guilty to or been found guilty of violating the provisions of this chapter, and is granted a suspended imposition or execution of sentence or placed under the supervision of the board of probation and parole shall be required to participate in a program of treatment, education and rehabilitation designed for perpetrators of sexual offenses. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of such program.

(L. 1984 H.B. 1255)

566.141. All probation or parole to be conditioned on receiving appropriate treatment.–Any person who is convicted of or pleads guilty or nolo contendere to any sexual offense involving a child shall be required as a condition of probation or parole to be involved in an appropriate treatment program.

(L. 1990 H.B. 1370, et al. § 5)

566.151. Enticement of a child, penalties.

1. A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct with a child.

2. It is not an affirmative defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

3. Attempting to entice a child is a class D felony.

4. Enticement of a child is a class C felony unless the person has previously pled guilty to or been found guilty of violating the provisions of this section, section 568.045, 568.050, or 568.060, RSMo, or this chapter, in which case it is a class B felony.

(L. 2002 S.B. 969, et al.)

CHAPTER 568, RSMo
OFFENSES AGAINST THE FAMILY

568.010. Bigamy.

1. A married person commits the crime of bigamy if he:

(1) Purports to contract another marriage; or

(2) Cohabits in this state after a bigamous marriage in another jurisdiction.

2. A married person does not commit bigamy if, at the time of the subsequent marriage ceremony, he reasonably believes that he is legally eligible to remarry.

3. The defendant shall have the burden of injecting the issue of reasonable belief of eligibility to remarry.

4. An unmarried person commits the crime of bigamy if he

(1) Purports to contract marriage knowing that the other person is married; or

(2) Cohabits in this state after a bigamous marriage in another jurisdiction.

5. Bigamy is a class A misdemeanor.

(L. 1977 S.B. 60)

Effective 1-1-79

568.020. Incest.

1. A person commits the crime of incest if he marries or purports to marry or engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

(1) His ancestor or descendant by blood or adoption; or

(2) His stepchild, while the marriage creating that relationship exists; or

(3) His brother or sister of the whole or half-blood; or

(4) His uncle, aunt, nephew or niece of the whole blood.

2. For purposes of this section:

(1) **"Sexual intercourse"** means any penetration, however slight, of the female sex organ by the male sex organ;

(2) **"Deviate sexual intercourse"** means any act of sexual gratification between persons not lawfully married to one another, involving the genitals of one person and the mouth, tongue or anus of another.

3. Incest is a class D felony.

(L. 1977 S.B. 60, A.L. 1979 S.B. 234)

Effective 6-15-79

CROSS REFERENCE

Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

Conviction of offense, on release registration requirements and penalty for failure to comply (Megan's Law), RSMo 589.400 to 589.425

568.030. Abandonment of child in the first degree, penalty.

1. A person commits the crime of abandonment of a child in the first degree if, as a parent, guardian or other person legally charged with the care or custody of a child less than four years old, he leaves the child in any place with purpose wholly to abandon it, under circumstances which are likely to result in serious physical injury or death.

2. Abandonment of a child in the first degree is a class B felony.

(L. 1977 S.B. 60, A.L. 1995 H.B. 160)

568.032. Abandonment of a child, second degree—penalty.

1. A person commits the crime of abandonment of a child in the second degree if, as a parent, guardian or other person legally charged with the care or custody of a child less than eight years old, he leaves the child in any place with purpose wholly to abandon it, under circumstances which are likely to result in serious physical injury or death.

2. Abandonment of a child in the second degree is a class D felony.

(L. 1995 H.B. 160)

568.040. Criminal nonsupport, penalty, prosecuting attorneys to report cases to division of child support enforcement.

1. A person commits the crime of nonsupport if he knowingly fails to provide, without good cause, adequate support for his spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide, without good cause, adequate support which such parent is legally obligated to provide for his child or stepchild who is not otherwise emancipated by operation of law.

2. For purposes of this section:

(1) **"Child"** means any biological or adoptive child, or any child legitimated by legal process, or any child whose relationship to the defendant has been determined, by a court of law in a proceeding for dissolution or legal separation, to be that of child to parent;

(2) **"Good cause"** means any substantial reason why the defendant is unable to provide adequate support. Good cause does not exist if the defendant purposely maintains his inability to support;

(3) **"Support"** means food, clothing, lodging, and medical or surgical attention;

(4) It shall not constitute a failure to provide medical and surgical attention, if nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

3. The defendant shall have the burden of injecting the issues raised by subdivisions (2) and (4) of subsection 2.

4. Criminal nonsupport is a class A misdemeanor, unless the person obligated to pay child support commits the crime of nonsupport in each of six individual months within any twelve-month period, or the total arrearage is in excess of five thousand dollars, in either of which case it is a class D felony.

5. Beginning January 1, 1991, every prosecuting attorney in any county which has entered into a cooperative agreement with the division of child support enforcement shall report to the division on a quarterly basis the number of charges filed and the number of convictions obtained under this section by the prosecuting attorney's office on all IV-D cases. The division shall consolidate the reported information into a statewide report by county and make the report available to the general public.

6. Persons accused of committing the offense of nonsupport of the child shall be prosecuted:

(1) In any county in which the child resided during the period of time for which the defendant is charged; or

(2) In any county in which the defendant resided during the period of time for which the defendant is charged.

(L. 1977 S.B. 60, A.L. 1990 S.B. 834, A.L. 1993 S.B. 253)

(1984) A conviction will lie whether or not the child actually suffered from actual physical or material want or destitution. State v. Davis (Mo. App.), 675 S.W.2d 410.

(1991) Statute was not unconstitutionally vague when term "minor" was not defined. When there is a well-known common law meaning, it is presumed that the term will be so construed unless it clearly appears it was not intended. State v. Duggar, 806 S.W.2d (Mo. 1991) (en banc).

(1993) Fact that minor child does not suffer deprivation of necessary food, clothing, lodging, medical or surgical attention, or that such needs are being supplied by another, does not abrogate parent's obligation to provide adequate support. State v. Morovitz, 867 S.W.2d 506 (Mo. en banc).

568.045. Endangering the welfare of a child in the first degree, penalties.

1. A person commits the crime of endangering the welfare of a child in the first degree if:

(1) The person knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years old; or

(2) The person knowingly engages in sexual conduct with a person under the age of seventeen years over whom the person is a parent, guardian, or otherwise charged with the care and custody;

(3) The person knowingly encourages, aids or causes a child less than seventeen years of age to engage in any conduct which violates the provisions of chapter 195, RSMo;

(4) Such person enlists the aid, either through payment or coercion, of a person less than seventeen years of age to unlawfully manufacture, compound, produce, prepare, sell, transport, test or analyze amphetamine or methamphetamine or any of their analogues, or to obtain any material used to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues; or

(5) Such person, in the presence of a person less than seventeen years of age, unlawfully manufactures, compounds, produces, prepares, sells, transports, tests or analyzes amphetamine or methamphetamine or any of their analogues.

2. Endangering the welfare of a child in the first degree is a class D felony unless the offense is committed as part of a ritual or ceremony, or except on a second or subsequent offense, in which case the crime is a class C felony.

(L. 1990 H.B. 1370, et al., A.L. 1994 S.B. 693, A.L. 1998 H.B. 1147, et al.)

568.050. Endangering the welfare of a child in the second degree.

1. A person commits the crime of endangering the welfare of a child in the second degree if:

(1) He with criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years old; or

(2) He knowingly encourages, aids or causes a child less than seventeen years old to engage in any conduct which causes or tends to cause the child to come within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years old, he recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him from coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(4) He knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in section 195.130, RSMo.

2. Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.

3. Endangering the welfare of a child in the second degree is a class A misdemeanor unless the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

(L. 1977 S.B. 60, A.L. 1984 H.B. 1616, A.L. 1988 H.B. 1340 & 1348, A.L. 1990 H.B. 1030 merged with H.B. 1370, et al.)

(1984) The state is required to prove that defendant knowingly encouraged a child less than seventeen years of age to engage in conduct tending to injure the child's welfare; knowing the child to be less than seventeen is a material element of the crime. Recklessness is not sufficient. State v. Nations (Mo. App.), 676 S.W.2d 282.

568.052. Leaving a child unattended in a motor vehicle who causes an accident—first and second degree, penalties.

1. As used in this section, the following terms mean:

(1) **"Collision"**, the act of a motor vehicle coming into contact with an object or a person;

(2) **"Injury"**, physical harm to the body of a person;

(3) **"Motor vehicle"**, any automobile, truck, truck-tractor, or any motor bus or motor-propelled vehicle not exclusively operated or driven on fixed rails or tracks;

(4) **"Unattended"**, not accompanied by an individual fourteen years of age or older.

2. A person commits the crime of leaving a child unattended in

a motor vehicle in the first degree if such person knowingly leaves a child ten years of age or less unattended in a motor vehicle and such child fatally injures another person by causing a motor vehicle collision or by causing the motor vehicle to fatally injure a pedestrian. Such person shall be guilty of a class C felony.

3. A person commits the crime of leaving a child unattended in a motor vehicle in the second degree if such person knowingly leaves a child ten years of age or less unattended in a motor vehicle and such child injures another person by causing a motor vehicle collision or by causing the motor vehicle to injure a pedestrian. Such person shall be guilty of a class A misdemeanor.

(L. 2000 S.B. 757 & 602)

568.060. Abuse of a child, penalty.

1. A person commits the crime of abuse of a child if such person:

(1) Knowingly inflicts cruel and inhuman punishment upon a child less than seventeen years old; or

(2) Photographs or films a child less than eighteen years old engaging in a prohibited sexual act or in the simulation of such an act or who causes or knowingly permits a child to engage in a prohibited sexual act or in the simulation of such an act for the purpose of photographing or filming the act.

2. As used in this section **"prohibited sexual act"** means any of the following, whether performed or engaged in either with any other person or alone: sexual or anal intercourse, masturbation, bestiality, sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.

3. Abuse of a child is a class C felony, unless:

(1) In the course thereof the person inflicts serious emotional injury on the child, or the offense is committed as part of a ritual or ceremony in which case the crime is a class B felony; or

(2) A child dies as a result of injuries sustained from conduct chargeable pursuant to the provisions of this section, in which case the crime is a class A felony.

4. As used in this section, the word "fetishism" means a condition in which erotic feelings are excited by an object or body part whose presence is psychologically necessary for sexual stimulation or gratification.

(L. 1977 S.B. 60, A.L. 1984 H.B. 1255, A.L. 1990 H.B. 1370, et al., A.L. 1997 S.B. 56)

(1985) Held not invalid due to vagueness and does not violate the First Amendment because of overbreadth. State v. Helgoth (Mo. banc), 691 S.W.2d 281.

568.065. Genital mutilation of a female child, penalty—affirmative defenses.

1. A person commits the crime of genital mutilation if such person:

(1) Excises or infibulates, in whole or in part, the labia majora, labia minora, vulva or clitoris of a female child less than seventeen years of age; or

(2) Is a parent, guardian or other person legally responsible for a female child less than seventeen years of age and permits the excision or infibulation, in whole or in part, of the labia majora, labia minora, vulva or clitoris of such female child.

2. Genital mutilation is a class B felony.

3. Belief that the conduct described in subsection 1 of this section is required as a matter of custom, ritual or standard practice, or consent to the conduct by the child on whom it is performed or by the child's parent or legal guardian, shall not be an affirmative defense to a charge pursuant to this section.

4. It is an affirmative defense that the defendant engaged in the conduct charged which constitutes genital mutilation if the conduct was:

(1) Necessary to preserve the health of the child on whom it is performed and is performed by a person licensed to practice medicine in this state; or

(2) Performed on a child who is in labor or who has just given birth and is performed for medical purposes connected with such labor or birth by a person licensed to practice medicine in this state.

(L. 2000 S.B. 757 & 602)

CROSS REFERENCE

Child molestation, first and second degree, RSMo 566.067, 566.068

568.070. Unlawful transactions with a child.

1. A person commits the crime of unlawful transactions with a child if:

(1) Being a pawnbroker, junk dealer, dealer in secondhand goods, or any employee of such person, he with criminal negligence buys or receives any personal property other than agricultural products from an unemancipated minor, unless the child's custodial parent or guardian has consented in writing to the transaction; or

(2) He knowingly permits a minor child to enter or remain in a place where illegal activity in controlled substances, as defined in chapter 195, RSMo, is maintained or conducted; or

(3) He with criminal negligence sells blasting caps, bulk gunpowder, or explosives to a child under the age of seventeen, or

fireworks as defined in section 320.110, RSMo, to a child under the age of fourteen, unless the child's custodial parent or guardian has consented in writing to the transaction. Criminal negligence as to the age of the child is not an element of this crime.

2. Unlawful transactions with a child is a class B misdemeanor.

(L. 1977 S.B. 60)

Effective 1-1-79

568.080. Child used in sexual performance, penalties.

1. A person commits the crime of use of a child in a sexual performance if, knowing the character and content thereof, the person employs, authorizes, or induces a child less than seventeen years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in such sexual performance.

2. Use of a child in a sexual performance is a class C felony, unless in the course thereof the person inflicts serious emotional injury on the child, in which case the crime is a class B felony.

(L. 1984 H.B. 1255)

568.090. Promoting sexual performance by a child, penalties.

1. A person commits the crime of promoting a sexual performance if, knowing the character and content thereof, the person promotes a sexual performance by a child less than seventeen years of age or produces, directs, or promotes any performance which includes sexual conduct by a child less than seventeen years of age.

2. Promoting a sexual performance is a class C felony.

(L. 1984 H.B. 1255)

568.100. Factors to consider in establishing age of child participating in sexual performances—testimony may be videotaped, when.

1. When it becomes necessary for the purposes of section 568.060, 568.080 or 568.090 to determine whether a child who participated in a sexual performance was younger than seventeen years of age, the court or jury may make this determination by any of the following methods:

(1) Personal inspection of the child;

(2) Inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) Oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) Expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) Any other method authorized by law or by the rules of evidence.

2. When it becomes necessary for the purposes of section 568.060, 568.080 or 568.090 to determine whether a child who participated in the sexual conduct consented to the conduct, the term "consent" shall have the meaning given it in section 556.061, RSMo.

3. Upon request of the prosecuting attorney, the court may order that the child's testimony be videotaped pursuant to section 492.303, RSMo, or as otherwise provided by law.

(L. 1984 H.B. 1225, A.L. 1987 H.B. 113, et al.)

Effective 7-15-87

568.110. Professional's duty to report on film, photographs, videotapes, failure to report, penalty–exceptions.

1. Any film and photographic print processor, computer provider, installer or repair person, or any Internet service provider who has knowledge of or observes, within the scope of the person's professional capacity or employment, any film, photograph, videotape, negative, slide or computer-generated image or picture depicting a child under the age of eighteen years engaged in an act of sexual conduct shall report such instance to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible.

2. Failure to make such report shall be a class B misdemeanor.

3. Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.

(L. 1984 H.B. 1255, A.L. 2000 S.B. 757 & 602)

568.120. Treatment program for first offenders, cost—second offense, no suspension of sentence or probation.

1. Any person who has pleaded guilty to or been found guilty of violating the provisions of section 568.020, 568.060, 568.080 or 568.090, and who is granted a suspended imposition or execution of sentence, or placed under the supervision of the board of probation and parole, shall be required to participate in an appropriate program of treatment, education and rehabilitation. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of such program.

2. Notwithstanding other provisions of law to the contrary, any person who has previously pleaded guilty to or been found guilty of violating the provisions of sections 568.020, 568.060, 568.080 and 568.090, and who subsequently pleads guilty or is found guilty of violating any one of the foregoing sections, shall not be granted a suspended imposition of sentence, a suspended execution of

sentence, nor probation by the circuit court for the subsequent offense.

(L. 1984 H.B. 1255)

568.175. Trafficking in children—elements of crime—penalty.

1. A person, partnership, corporation, agency, association, institution, society or other organization commits the crime of trafficking in children if he or it offers, gives, receives or solicits any money, consideration or other thing of value for the delivery or offer of delivery of a child to another person, partnership, corporation, agency, association, institution, society or other organization for purposes of adoption, or for the execution of a consent to adopt or waiver of consent to future adoption or a consent to termination of parental rights.

2. A crime is not committed under this section if the money, consideration or thing of value or conduct is permitted under chapter 453, RSMo, relating to adoption.

3. The crime of trafficking in children is a class C felony.

(L. 1985 H.B. 366, et al. § 1, A.L. 1997 H.B. 343)

CROSS REFERENCE

Application of law to adoption petitions filed on or after August 28, 1997, RSMo 453.012

(1988) Section 568.175, RSMo, prohibits delivery of a child to the person offering the money as well as to a third party as the phrase "to another person" means a person other than the one who has control of and is to deliver the child. State v. Daugherty, 744 S.W.2d 849 (Mo.App.S.D.).

CHAPTER 573, RSMo
PORNOGRAPHY AND RELATED OFFENSES

573.010. Definitions.–As used in this chapter the following terms shall mean:

(1) **"Child",** any person under the age of fourteen;

(2) **"Child pornography",** any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a child under the age of eighteen;

(3) **"Displays publicly"**, exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision

viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;

(4) **"Explicit sexual material"**, any pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

(5) **"Furnish"**, to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;

(6) **"Material"**, anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates and other latent representational objects;

(7) **"Minor"**, any person under the age of eighteen;

(8) **"Nudity"**, the showing of post-pubertal human genitals or pubic area, with less than a fully opaque covering;

(9) "**Obscene"**, any material or performance is obscene if, taken as a whole:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and

(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;

(10) **"Performance"**, any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;

(11) **"Pornographic for minors"**, any material or performance is pornographic for minors if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

(12) **"Promote"**, to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;

(13) **"Sadomasochistic abuse"**, flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

(14) **"Sexual conduct"**, actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

(15) **"Sexual excitement"**, the condition of human male or female genitals when in a state of sexual stimulation or arousal;

(16) **"Wholesale promote"**, to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purposes of resale or redistribution.

(L. 1977 S.B. 60, A.L. 1985 H.B. 366, et al., A.L. 1987 H.B. 113, et al., A.L. 1989 H.B. 225, A.L. 2000 S.B. 757 & 602)

573.020. Promoting obscenity in the first degree.

1. A person commits the crime of promoting obscenity in the first degree if, knowing its content and character:

(1) He or she wholesale promotes or possesses with the purpose to wholesale promote any obscene material; or

(2) He or she wholesale promotes for minors or possesses with the purpose to wholesale promote for minors any material pornographic for minors; or

(3) He or she promotes, wholesale promotes or possesses with the purpose to wholesale promote for minors material that is pornographic for minors via computer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor.

2. Promoting obscenity in the first degree is a class D felony.

(L. 1977 S.B. 60, A.L. 1987 H.B. 113, et al., A.L. 2000 S.B. 757 & 602)

573.023. Sexual exploitation of a minor, penalties.

1. A person commits the crime of sexual exploitation of a minor if, knowing of its content and character, such person photographs, films, videotapes, produces or otherwise creates obscene material with a minor or child pornography.

2. Sexual exploitation of a minor is a class B felony unless the minor is a child, in which case it is a class A felony.

(L. 2000 S.B. 757 & 602)

573.025. Promoting child pornography in the first degree.

1. A person commits the crime of promoting child pornography in the first degree if, knowing of its content and character, such person possesses with the intent to promote or promotes obscene material that has a child as one of its participants or portrays what appears to be a child as a participant or observer of sexual conduct.

2. Promoting child pornography in the first degree is a class B felony unless the person knowingly promotes such material to a minor, in which case it is a class A felony.

3. Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.

(L. 1985 H.B. 366, et al., A.L. 2000 S.B. 757 & 602)

573.030. Promoting obscenity in the second degree.

1. A person commits the crime of promoting pornography for minors or obscenity in the second degree if, knowing its content or character, he or she:

(1) Promotes or possesses with the purpose to promote any obscene material for pecuniary gain; or

(2) Produces, presents, directs or participates in any obscene performance for pecuniary gain; or

(3) Promotes or possesses with the purpose to promote any material pornographic for minors for pecuniary gain; or

(4) Produces, presents, directs or participates in any performance pornographic for minors for pecuniary gain; or

(5) Promotes, possesses with the purpose to promote, produces, presents, directs or participates in any performance that is pornographic for minors via computer, electronic transfer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor.

2. Promoting pornography for minors or obscenity in the second degree is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense pursuant to this section committed at a different time, in which case it is a class D felony.

(L. 1977 S.B. 60, A.L. 1987 H.B. 113, et al., A.L. 2000 S.B. 757 & 602)

(1986) It may be inferred that a clerk in a convenience store "knows", for purpose of a criminal conviction under this section, of the obscene nature of a magazine's content if the cover is sexually explicit. State v. Triplett, 722 S.W.2d 633 (Mo.App. 1986).

(1989) Obscenity is not within the area of constitutionally protected speech and statute is not impermissibly overbroad, ambiguous, or vague, and gives adequate prior notice of what constitutes prohibited conduct. (Mo. banc) State v. Simmer, 772 S.W.2d 372.

573.035. Promoting child pornography in the second degree.

1. A person commits the crime of promoting child pornography in the second degree if, knowing of its content and character such person possesses with the intent to promote or promotes child pornography or obscene material that has a minor as one of its participants, or portrays what appears to be a minor as a participant or observer of sexual conduct.

2. Promoting child pornography in the second degree is a class C felony, unless the person knowingly promotes such material to a minor, in which case it is a class B felony.

(L. 1985 H.B. 366, et al., A.L. 2000 S.B. 757 & 602)

573.037. Possession of child pornography.

1. A person commits the crime of possession of child pornography if, knowing of its content and character, such person possesses any obscene material that has a child as one of its participants or portrays what appears to be a child as an observer or participant of sexual conduct.

2. Possession of child pornography is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense under this section, in which case it is a class D felony.

(L. 1987 H.B. 113, et al., A.L. 2000 S.B. 757 & 602)

573.040. Furnishing pornographic materials to minors.

1. A person commits the crime of furnishing pornographic material to minors if, knowing its content and character, he or she:

(1) Furnishes any material pornographic for minors, knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that such person is a minor; or

(2) Produces, presents, directs or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing such performance is a minor or acting in reckless disregard of the likelihood that a minor is viewing the performance; or

(3) Furnishes, produces, presents, directs, participates in any performance or otherwise makes available material that is pornographic for minors via computer, electronic transfer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor.

2. Furnishing pornographic material to minors is a class A misdemeanor unless the person has pleaded guilty to or has been

found guilty of an offense pursuant to this section committed at a different time, in which case it is a class D felony.

(L. 1977 S.B. 60, A.L. 1987 H.B. 113, et al., A.L. 2000 S.B. 757 & 602)

573.050. Evidence in obscenity and child pornography cases.

1. In any prosecution under this chapter evidence shall be admissible to show:

(1) What the predominant appeal of the material or performance would be for ordinary adults or minors;

(2) The literary, artistic, political or scientific value of the material or performance;

(3) The degree of public acceptance in this state and in the local community;

(4) The appeal to prurient interest in advertising or other promotion of the material or performance;

(5) The purpose of the author, creator, promoter, furnisher or publisher of the material or performance.

2. Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to factors entering into the determination of the issues of obscenity or child pornography, shall be admissible.

3. In any prosecution for possession of child pornography or promoting child pornography in the first or second degree, the determination that the person who participated in the child pornography was younger than eighteen years of age may be made as set forth in section 568.100, RSMo, or reasonable inferences drawn by a judge or jury after viewing the alleged pornographic material shall constitute sufficient evidence of the child's age to support a conviction.

4. In any prosecution for promoting child pornography in the first or second degree, no showing is required that the performance or material involved appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to prevailing standards in the community as a whole.

(L. 1977 S.B. 60, A.L. 1985 H.B. 366, et al., A.L. 1987 H.B. 113, et al.)

Effective 7-15-87

573.060. Public display of explicit sexual material.

1. A person commits the crime of public display of explicit sexual material if he knowingly:

(1) Displays publicly explicit sexual material; or

(2) Fails to take prompt action to remove such a display from property in his possession after learning of its existence.

2. Public display of explicit sexual material is a class A misdemeanor unless the person has pleaded guilty to or has been

found guilty of an offense under this section committed at a different time, in which case it is a class D felony.

3. For purposes of this section, each day there is a violation of this section shall constitute a separate offense.

(L. 1977 S.B. 60, A.L. 1987 H.B. 113, et al.)

Effective 7-15-87

573.065. Coercing acceptance of obscene material.

1. A person commits the crime of coercing acceptance of obscene material if, knowing its content and character:

(1) He requires acceptance of obscene material as a condition to any sale, allocation, consignment or delivery of any other material; or

(2) He denies any franchise or imposes any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept any material obscene or pornographic for minors.

2. Coercing acceptance of obscene material is a class D felony.

(L. 1987 H.B. 113, et al.)

Effective 7-15-87

573.070. Injunctions and declaratory judgments.

1. Whenever material or a performance is being or is about to be promoted, furnished or displayed in violation of this chapter, a civil action may be instituted in the circuit court by the prosecuting or circuit attorney or by the city attorney of any city, town or village against any person violating or about to violate those sections in order to obtain a declaration that the promotion, furnishing or display of such material or performance is prohibited. Such an action may also seek an injunction appropriately restraining promotion, furnishing or display of the material or performance.

2. Such an action may be brought only in the circuit court of the county in which any such person resides, or where the violation is taking place or about to take place.

3. Any promoter, furnisher or displayer of, or a person who is about to be a promoter, furnisher or displayer of, the material or performance involved may intervene as of right as a party defendant in the proceedings.

4. The trial court and the appellate court shall give expedited consideration to actions and appeals brought under this section. The defendant shall be entitled to a trial of the issues beginning within one week after joinder of issue and a decision shall be rendered by the court within two days of the conclusion of the trial. No restraining order or injunction of any kind shall be issued restraining the promotion, furnishing or display of any material or performance without a prior adversary hearing before the court.

5. A final declaration obtained pursuant to this section may be used to form the basis for an injunction and for no other purpose.

6. All laws regulating the procedure for obtaining declaratory judgments or injunctions which are inconsistent with the provisions of this section shall be inapplicable to proceedings brought pursuant to this section. There shall be no right to jury trial in any proceedings under this section.

(L. 1977 S.B. 60, A.L. 1987 H.B. 113, et al.)

Effective 7-15-87

CHAPTER 589, RSMo
CRIME PREVENTIONS AND CONTROL PROGRAMS

589.010. Sections 589.010 to 589.040 may be cited as the "Sexual Assault Prevention Act".

(L. 1980 H.B. 1138, et al. § 2)

589.015. Definitions.–As used in sections 589.010 to 589.040:

(1) The term **"center"** shall mean the state center for the prevention and control of sexual assault established pursuant to section 589.030;

(2) The term **"sexual assault"** shall include:

(a) The acts of rape, forcible rape, statutory rape in the first degree, statutory rape in the second degree, sexual assault, sodomy, forcible sodomy, statutory sodomy in the first degree, statutory sodomy in the second degree, child molestation in the first degree, child molestation in the second degree, deviate sexual assault, sexual misconduct and sexual abuse, or attempts to commit any of the aforesaid, as these acts are defined in chapter 566, RSMo;

(b) The act of incest, as this act is defined in section 568.020, RSMo;

(c) The act of abuse of a child, as defined in subdivision (1) of subsection 1 of section 568.060, RSMo, which involves sexual contact, and as defined in subdivision (2) of subsection 1 of section 568.060, RSMo; and

(d) The act of use of a child in a sexual performance as defined in section 568.080, RSMo.

(L. 1980 H.B. 1138, et al. § 3, A.L. 1984 H.B. 1255, A.L. 1996 H.B. 974)

589.400. Registration of certain offenders with chief law officers of county of residence—time limitation—cities may request copy of registration.

1. Sections 589.400 to 589.425 shall apply to:

(1) Any person who, since July 1, 1979, has been or is hereafter

convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, an offense of chapter 566, RSMo; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit one or more of the following offenses: kidnapping; promoting prostitution in the first degree; promoting prostitution in the second degree; promotion prostitution in the third degree; incest; abuse of a child; used a child in a sexual performance; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or

(3) Any person who, since July 1 1979, has been committed to the department of mental health as a criminal sexual psychopath; or

(4) Any person who, since July 1, 1979, has been found not guilty as a result of mental disease or defect of any offense listed in subdivision (1) or (2) of this subsection; or

(5) Any person who is a resident of this state and has been or is required to register in another state or has been or is required to register under federal or military law; or

(6) Any person who has been or is required to register in another state or has been or is required to register under federal or military law and who works or attends school or training on a full-time or on a part-time basis in Missouri. Part-time in this subdivision means for more than fourteen days in any twelve-month period.

2. Any person to whom sections 589.400 to 589.425 apply* shall, within ten days of coming into any county, register with the chief law enforcement official of the county in which such person resides. The chief law enforcement official shall forward a copy of the registration form required by section 589.407 to a city, town or village law enforcement agency located within the county of the chief law enforcement official, if so requested. Such request may ask the chief law enforcement official to forward copies of all registration forms filed with such official. The chief law enforcement official may forward a copy of such registration form to any city, town or village law enforcement agency, if so requested.

3. The registration requirements of sections 589.400 through 589.425 are lifetime registration requirements unless all offenses requiring registration are reversed, vacated or set aside or unless the registrant is pardoned of the offense requiring registration.

(L. 1997 H.B. 883, A.L. 1998 H.B. 1405, et al., A.L. 2000 S.B. 757 & 602)

*Word “applies” appears in original rolls.

589.407. Registration, required information.—Any registration pursuant to sections 589.400 to 589.425 shall consist of completion of an offender registration form developed by the

Missouri state highway patrol. Such form shall include, but is not limited to the following:

(1) A statement in writing signed by the person, giving the name, address, Social Security number and phone number of the person, the place of employment of such person, the crime which requires registration, whether the person was sentenced as a persistent or predatory offender pursuant to section 558.018, RSMo, the date , place, and a brief description of such crime, the date and place of the conviction or plea regarding such crime, the age and gender of the victim at the time of the offense and whether the person successfully completed the Missouri sexual offender program pursuant to section 589.040, if applicable; and

(2) The fingerprints and a photograph of the person.

(L. 1997 H.B. 883, A.L. 1998 H.B. 1405, et al.)

Effective 1-1-99

CHAPTER 595, RSMo
VICTIMS OF CRIMES, COMPENSATION AND SERVICES

595.010. Definitions.

1. As used in sections 595.010 to 595.075, unless the context requires otherwise, the following terms shall mean:

(1) **"Child"**, a dependent, unmarried person who is under eighteen years of age and includes a posthumous child, stepchild, or an adopted child;

(2) **"Claimant"**, a victim or a dependent, relative, survivor, or member of the family, of a victim eligible for compensation pursuant to sections 595.010 to 595.075;

(3) **"Conservator"**, a person or corporation appointed by a court to have the care and custody of the estate of a minor or a disabled person, including a limited conservator;

(4) **"Counseling"**, problem-solving and support concerning emotional issues that result from criminal victimization licensed pursuant to section 595.030. Counseling is a confidential service provided either on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning after victimization. Counseling does not include victim advocacy services such as crisis telephone counseling, attendance at medical procedures, law enforcement interviews or criminal justice proceedings;

(5) **"Crime"**, an act committed in this state which, if committed by a mentally competent, criminally responsible person who had no legal exemption or defense, would constitute a crime; provided that, such act involves the application of force or violence or the threat of force or violence by the offender upon the victim but shall

include the crime of driving while intoxicated, vehicular manslaughter and hit and run; and provided, further, that no act involving the operation of a motor vehicle except driving while intoxicated, vehicular manslaughter and hit and run which results in injury to another shall constitute a crime for the purpose of sections 595.010 to 595.075, unless such injury was intentionally inflicted through the use of a motor vehicle. A crime shall also include an act of terrorism, as defined in 18 U.S.C. section 2331, which has been committed outside of the United States against a resident of Missouri;

(6) **"Crisis intervention counseling"**, helping to reduce psychological trauma where victimization occurs;

(7) **"Department"**, the department of public safety;

(8) **"Dependent"**, mother, father, spouse, spouse's mother, spouse's father, child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly or partially dependent for support upon, and living with, but shall include children entitled to child support but not living with, the victim at the time of his injury or death due to a crime alleged in a claim pursuant to sections 595.010 to 595.070;

(9) **"Direct service"**, providing physical services to a victim of crime including, but not limited to, transportation, funeral arrangements, child care, emergency food, clothing, shelter, notification and information;

(10) **"Director"**, the director of public safety of this state or a person designated by him for the purposes of sections 595.010 to 595.070;

(11) **"Disabled person"**, one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his financial resources, including a partially disabled person who lacks the ability, in part, to manage his financial resources;

(12) **"Division"**, the division of workers' compensation of the state of Missouri;

(13) **"Emergency service"**, those services provided within thirty days to alleviate the immediate effects of the criminal act or offense, and may include cash grants of not more than one hundred dollars;

(14) **"Earnings"**, net income or net wages;

(15) **"Family"**, the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, or spouse's parents;

(16) **"Funeral expenses"**, the expenses of the funeral, burial, cremation or other chosen method of interment, including plot or tomb and other necessary incidents to the disposition of the remains;

(17) **"Gainful employment"**, engaging on a regular and continuous basis, up to the date of the incident upon which the

claim is based, in a lawful activity from which a person derives a livelihood;

(18) **"Guardian"**, one appointed by a court to have the care and custody of the person of a minor or of an incapacitated person, including a limited guardian;

(19) **"Hit and run"**, the crime of leaving the scene of a motor vehicle accident as defined in section 577.060, RSMo;

(20) **"Incapacitated person"**, one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur, including a partially incapacitated person who lacks the capacity to meet, in part, such essential requirements;

(21) **"Injured victim"**, a person:

(a) Killed or receiving a personal physical injury in this state as a result of another person's commission of or attempt to commit any crime;

(b) Killed or receiving a personal physical injury in this state while in a good faith attempt to assist a person against whom a crime is being perpetrated or attempted;

(c) Killed or receiving a personal physical injury in this state while assisting a law enforcement officer in the apprehension of a person who the officer has reason to believe has perpetrated or attempted a crime;

(22) **"Law enforcement official"**, a sheriff and his regular deputies, municipal police officer or member of the Missouri state highway patrol and such other persons as may be designated by law as peace officers;

(23) **"Offender"**, a person who commits a crime;

(24) **"Personal physical injury"**, actual bodily harm only with respect to the victim. Personal physical injury may include mental or nervous shock resulting from the specific incident upon which the claim is based;

(25) **"Private agency"**, a not-for-profit corporation, in good standing in this state, which provides services to victims of crime and their dependents;

(26) **"Public agency"**, a part of any local or state government organization which provides services to victims of crime;

(27) **"Relative"**, the spouse of the victim or a person related to the victim within the third degree of consanguinity or affinity as calculated according to civil law;

(28) **"Survivor"**, the spouse, parent, legal guardian, grandparent, sibling or child of the deceased victim of the victim's household at the time of the crime;

(29) **"Victim"**, a person who suffers personal physical injury or death as a direct result of a crime, as defined in subdivision (5) of this subsection*;

(30) **"Victim advocacy"**, assisting the victim of a crime and his dependents to acquire services from existing community resources.

2. As used in sections 565.024 and 565.060, RSMo, and sections 595.010 to 595.075, the term **"alcohol-related traffic offense"** means those offenses defined by sections 577.001, 577.010, and 577.012, RSMo, and any county or municipal ordinance which prohibits operation of a motor vehicle while under the influence of alcohol.

(L. 1981 H.B. 41, et al. § 1, A.L. 1982 S.B. 497, A.L. 1984 H.B. 1226, A.L. 1985 H.B. 715, A.L. 1993 S.B. 19, A.L. 1994 H.B. 1677 merged wit S.B. 554, A.L. 1997 S.B. 430)

Effective 4-29-97

*Original rolls contain the word "section".

595.020. Eligibility for compensation.

1. Except as hereinafter provided, the following persons shall be eligible for compensation pursuant to sections 595.010 to 595.075:

(1) A victim of a crime;

(2) In the case of a sexual assault victim:

(a) A relative of the victim requiring counseling in order to better assist the victim in his recovery; and

(3) In the case of the death of the victim as a direct result of the crime:

(a) A dependent of the victim;

(b) Any member of the family who legally assumes the obligation, or who pays the medical or burial expenses incurred as a direct result thereof; and

(c) A survivor of the victim requiring counseling as a direct result of the death of the victim.

2. An offender or an accomplice of an offender shall in no case be eligible to receive compensation with respect to a crime committed by the offender. No victim or dependent shall be denied compensation solely because he is a relative of the offender or was living with the offender as a family or household member at the time of the injury or death. However, the division may award compensation to a victim or dependent who is a relative, family or household member of the offender only if the division can reasonably determine the offender will receive no substantial economic benefit or unjust enrichment from the compensation.

3. No compensation of any kind may be made to a victim or intervenor injured while confined in any federal, state, county, or municipal jail, prison or other correctional facility, including house arrest.

4. No compensation of any kind may be made to a victim who has been finally adjudicated and found guilty, in a criminal prosecution under the laws of this state, of two felonies within the past ten years, of which one or both involves illegal drugs or violence. The

division may waive this restriction if it determines that the interest of justice would be served otherwise.

5. In the case of a claimant who is not otherwise ineligible pursuant to subsection 4 of this section, who is incarcerated as a result of a conviction of a crime not related to the incident upon which the claim is based at the time of application, or at any time following the filing of the application:

(1) The division shall suspend all proceedings and payments until such time as the claimant is released from incarceration;

(2) The division shall notify the applicant at the time the proceedings are suspended of the right to reactivate the claim within six months of release from incarceration. The notice shall be deemed sufficient if mailed to the applicant at the applicant's last known address;

(3) The claimant shall file an application to request that the case be reactivated not later than six months after the date the claimant is released from incarceration. Failure to file such request within the six-month period shall serve as a bar to any recovery.

6. Victims of crime who are not residents of the state of Missouri may be compensated only when federal funds are available for that purpose. Compensation for nonresident victims shall terminate when federal funds for that purpose are no longer available.

7. A Missouri resident who suffers personal physical injury or, in the case of death, a dependent of the victim or any member of the family who legally assumes the obligation, or who pays the medical or burial expenses incurred as a direct result thereof, in another state, possession or territory of the United States may make application for compensation in Missouri if:

(1) The victim of the crime would be compensated if the crime had occurred in the state of Missouri;

(2) The place that the crime occurred is a state, possession or territory of the United States, or location outside of the United States that is covered and defined in 18 U.S.C. section 2331, that does not have a crime victims' compensation program for which the victim is eligible and which provides at least the same compensation that the victim would have received if he had been injured in Missouri.

(L. 1981 H.B. 41, et al. § 3, A.L. 1985 H.B. 715, A.L. 1989 H.B. 502, et al. merged with S.B. 138, A.L. 1990 H.B. 974, A.L. 1993 S.B. 19, A.L. 1994 S.B. 554, A.L. 1997 S.B. 430)

Effective 4-29-97

595.030. Compensation, out-of-pocket loss requirement, maximum amount for counseling expenses—award, computation—deduction—medical care, requirements—counseling, requirements—maximum award—joint claimants, distribution—method, timing of payment determined by division.

1. No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least fifty dollars or has lost two

continuous weeks of earnings or support from gainful employment. "Out-of-pocket loss" shall mean unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services, including psychiatric, psychological or counseling expenses, necessary as a result of the crime upon which the claim is based, except that the amount paid for psychiatric, psychological or counseling expenses per eligible claim shall not exceed two thousand five hundred dollars. Fifty dollars shall be deducted from any award granted under sections 595.010 to 595.075, except that an award to a person sixty-five years of age or older is not subject to any deduction.

2. No compensation shall be paid unless the division of workers' compensation finds that a crime was committed, that such crime directly resulted in personal physical injury to, or the death of, the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the division of workers' compensation finds that the report to the police was delayed for good cause. If the victim is under eighteen years of age such report may be made by the victim's parent, guardian or custodian; by a physician, a nurse, or hospital emergency room personnel; by the division of family services personnel; or by any other member of the victim's family.

3. No compensation shall be paid for medical care if the service provider is not a medical provider as that term is defined in section 595.027, and the individual providing the medical care is not licensed by the state of Missouri or the state in which the medical care is provided.

4. No compensation shall be paid for psychiatric treatment or other counseling services, including psychotherapy, unless the service provider is a:

(1) Physician licensed pursuant to chapter 334, RSMo, or licensed to practice medicine in the state in which the service is provided;

(2) Psychologist licensed pursuant to chapter 337, RSMo, or licensed to practice psychology in the state in which the service is provided;

(3) Clinical social worker licensed pursuant to chapter 337, RSMo; or

(4) Professional counselor licensed pursuant to chapter 337, RSMo.

5. Any compensation paid under sections 595.010 to 595.075 for death or personal injury shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support from gainful employment, not to exceed two hundred dollars per week, resulting from such injury or death. In the event of death of the victim, an award may be made for reasonable and necessary

expenses actually incurred for preparation and burial not to exceed five thousand dollars.

6. Any compensation for loss of earnings or support from gainful employment shall be in an amount equal to the actual loss sustained not to exceed two hundred dollars per week; provided, however, that no award under sections 595.010 to 595.075 shall exceed fifteen thousand dollars. If two or more persons are entitled to compensation as a result of the death of a person which is the direct result of a crime or in the case of a sexual assault, the compensation shall be apportioned by the division of workers' compensation among the claimants in proportion to their loss.

7. The method and timing of the payment of any compensation under sections 595.010 to 595.075 shall be determined by the division.

(L. 1981 H.B. 41, et al. § 5, A.L. 1985 H.B. 715, A.L. 1989 H.B. 502, et al., A.L. 1993 S.B. 19, A.L. 1994 S.B. 554, A.L. 1995 H.B. 174, et al.)